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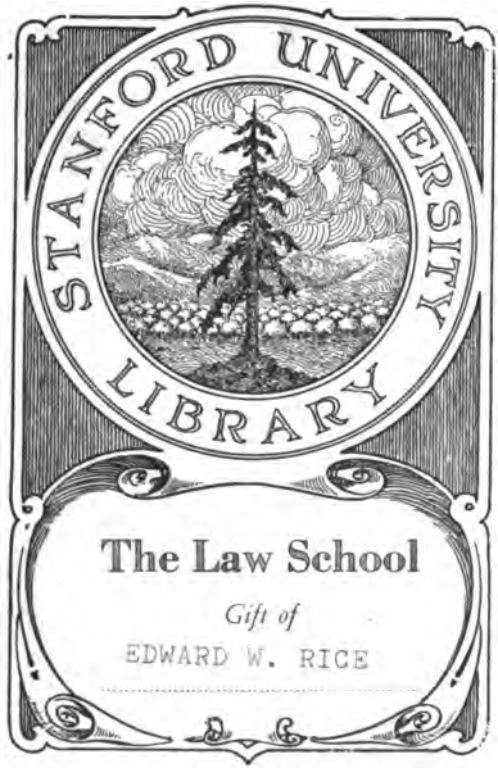
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# MARRIAGE

WITH A

# DECEASED BROTHER'S WIFE.

[Entered at Stationers' Hall.]

To Mr. Cheek
From the author
1870

# MARRIAGE

WITH A

# DECEASED BROTHER'S WIFE,

CONDEMNED BY THE LAWS OF

## NATURE, SCRIPTURE, AND THE TESTIMONY OF CHURCHES AND NATIONS.

BY

CHALMERS IZETT PATON,

AUTHOR OF "FREEMASONRY IN RELATION TO THE FAMILY CIRCLE," ETC., ETC.

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# PREFACE.

It will not unreasonably be regarded at first sight as presumptuous that a humble layman, more conversant with business than with Theology, should attempt to discuss so important a subject as that of Incestuous Marriages. I have not, however, undertaken the task without good reason, nor without much labour, study, and preparation. Unworthy men have attempted to defend the crime of Marriage with a Deceased Brother's Wife. It has been with a view to expose their sophistries, and, if possible, to prevent the spread of a great evil, that I have been led to study the whole subject, and to publish the result of my cogitations as they appear in the following pages.

I have to express my obligations to the Rev. James Gibson, D.D., Professor of Systematic Theology and Church History in the Free Church College, Glasgow, for his kindness in allowing me to quote largely from his able work on "The Marriage Affinity Question;" and I have pleasure in stating how deeply I feel indebted for facts and arguments to the exhaustive

treatise of the Rev. Dr William Lindsay, Professor of Sacred Languages and Biblical Criticism to the United Presbyterian Church, in his "Inquiry into the Christian Law as to the Relationships which Bar Marriage;" and to the brief though instructive work of the Rev. John Macrae, of Hawick, on "The Scripture Law of Marriage with reference to the Prohibited Degrees."

The present treatise has this peculiarity in its favour, that, so far as I know, no other work exists in this country discussing fully the question of Marriage with a Deceased Brother's Wife. In the hope that it will serve the purpose for which it has been written, and that it will tend to some extent to stem the tide of immorality which, there is too much reason to fear, is strengthening and extending in Great Britain as well as on the Continent and in America, I humbly submit it to an interested public.

CHALMERS I. PATON.

EDINBURGH, *January* 1869.

# CHAPTER I.

## INTRODUCTION.

THE present age may be said to be decidedly revolutionary in its character. There is an uneasy feeling—a restless impatience for change—pervading all classes. Old ideas in politics are being repudiated or ridiculed, old authorities in morals are being impugned or burlesqued, old standards in religion are being canvassed, called in question, and in some cases rejected and condemned. It is difficult to say what the end of so much mental and social inquietude will be, or what influence it will have on the material and moral prospects of our family relationship, the nation, and the world at large. The desire seems to be to get out of all "the old paths," and to court fortune or favour in new ones—to doubt everything however well established, and to believe, or try to believe, everything not established at all. This breaking loose of mind and spirit is not confined to the region of science. It is noticed in politics; it presents itself everywhere in religious creeds and convictions; it is found in the wide fields of social economics; and it is every year becoming more and more observable in the broad—unhappily, now too broad—domains of morals. It is not my purpose in the present work to picture the new phases of thought or discuss the new courses of conduct in the various departments of life to which I have referred. I have a humbler, though not less important, duty to discharge—that of pointing out how the most sacred social bonds are being broken by lax law and laxer discipline, and that of urging the moral and well-disposed of all classes of British society to look where they are being led, and to stem the tide of immorality before it surges into their own households and

acquires sufficient force and volume to overwhelm themselves and all whom they hold dear.

My subject is the Marriage Relations, and my object is not so much to express opinions of my own as to place before the British public the Laws of the Eternal and Unchangeable God, and the conclusions arrived at, with regard to these Laws, by the Jews, to whom they were originally given—by the early Christians, among whom they were confirmed—by the Fathers and Councils of all the leading Churches, before and subsequent to the Reformation—by the laws and practices of heathen nations, ancient and modern—by the laws and customs of our own nation at various periods of its history—by the constitution and principles of Ecclesiastical Courts, with their Canon Laws, Creeds, and Confessions—and by the Laws of Nature, which, however they may be despised or trampled under foot, can never be broken with impunity or set aside as out of date. The field is large. Let me say at once, however, that while I shall leave no really important feature of it untouched, my chief design is to expose the iniquity of that horribly incestuous and inconceivably dangerous innovation—the Marriage of a Brother with a Deceased Brother's Wife.

It may be thought utterly unnecessary, in an age of boasted civilization and religion like the present, and where so much respect is supposed to be conceded to what are called "The Laws of Nature," that so heinous a vice and crime as that of Concubinage or Marriage with a Deceased Brother's Wife should be protested against and condemned. There is no disguising the fact, however, that the enormity is winked at in high quarters—that it is finding apologists or approvers among men holding distinguished places and offices in certain churches—that it is tolerated, if not countenanced, in bodies which formerly would have repudiated it with their whole heart and soul —and that it is a growing and extending crime, perpetrated in the face of the Laws of God and man, and, so far as can be observed, without the slightest regard to the evils it

entails on children and children's children, or on society at large.

It would be an unpardonable sin to attempt to disguise the fact that Incest in this relationship is sapping the foundations of our social moralities; and it would be something worse than folly to contend, as some unhappily do, that it is a vice so unnatural, and so opposed to every law, human and divine, that it can never spread except among the most depraved and degraded sections of our large civic populations. It is spreading; it is corrupting the atmosphere around us; wealth and influence in this, as in many other matters, sanctions, or at all events permits, the abomination; and it is the rankest absurdity to say that, because it is opposed to the laws of nature, it cannot disseminate to any serious extent its foul poison, or pollute with its fetid disciples any considerable portion of well-ordered society. The experience of history has shewn that men have outraged every principle of nature; that nations, like individuals, have set natural laws at defiance; that there is no excess of immorality or crime which men, to gratify their own foul lusts and passions, will not indulge in, if they can only satisfy themselves that their iniquities will be winked at, and that the law, however energetic in its protests, is not firm and decisive enough to punish and condemn.

I do not need to refer, in this connexion, to the history and fate of the Egyptians and Canaanites, who, though they had not, like the Jews, a written law as to Incest, were nevertheless swept off as with a besom of destruction, because, contrary to the laws of nature, they committed all manner of vices and crimes, and conducted themselves, in their relations with each other, worse even than the brutes of the field. "Defile not yourselves," said God, to His own peculiar people, at the very time He was promulgating among them His laws as to Marriage, "in any of these things; for in all these the nations are defiled which I cast out before you, and the land is defiled; therefore I do visit the iniquity thereof upon it, and the land itself vomiteth

out her inhabitants. Ye shall therefore keep My statutes and My judgments, and shall not commit any of these abominations; neither any of your own nation, nor any stranger that sojourneth among you, that the land spew not you out also, when ye defile it, as it spewed out the nations that were before you"—Lev. xviii. 24–28. Nor need I refer to the picture that St Paul draws of the Romans as a people, civilized though they were, steeped to the neck in unnatural crimes—"Even their women," says the Apostle, "did change the natural use into that which is against nature: and likewise also the men, leaving the natural use of the women, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet."—Romans i. 26, 27.

Nor need I, in short, refer to the manners and customs of heathen nations generally, where the most sacred relationships are violated with impunity, because there is no law to punish and no power to condemn; each man and woman being left to do very much what they think right in their own eyes, and not caring much as to what, in the eyes of others, more alive to the voice of conscience, may be regarded as the most hideous of vices and the most detestable of crimes.

It is enough to state, what every educated mind knows, that Nature does not always keep man right; that the Laws of Nature are often violated; and that it is only when the Laws of God, which purify and sublimate the corrupt tendencies of depraved man, are brought to bear upon him, and are enforced by Acts of Parliament, founded on a recognition of the Laws of God and a determination to give them practical effect, that he can be made a good citizen, a loyal subject, and a reputable member of elevated social and moral society.

## CHAPTER II.

### THE MOSAIC CODE OF INCEST.

THERE is only one known and recognised Code of Incest in the world, and that is the one promulgated by Moses, the great leader of the Children of Israel. There never has been, so far as can be found out, any other, reduced to writing, and no other is needed. Like all the Laws of Heaven it is perfect, commending itself, in its naked simplicity, to that nature which the great Creator has given us, and that conscience with which he has endowed us. It is neither too broad nor too narrow—too hard to keep nor too difficult to understand. It commends itself to, and is in accordance with, natural instinct, reason, and feeling—in fact it could not be otherwise, as it is the product of the God of Nature, who made man; who knows what is in man; and who, whatever the inconsistency of His creatures, is ever consistent with Himself, and ever in harmony with all the designs and plans He has set in motion in the great circles of His government. Whatever doubt or difficulty has been felt as to this code has arisen, like most doubts and difficulties in reference to other portions of the Sacred oracles, out of the tortuosities of schoolmen; out of the efforts of interested parties to add to it or take away from it; out of the lusts and passions and ambitions of weak-minded and sinful men; out of the waywardness and depravity of the human heart, the recklessness and regardlessness of deeply-seared consciences and willingly-blinded souls. Here is the whole law, as it was originally promulgated to the Jews:—

Lev. xviii. 6. "None of you shall approach to any that are near of kin to him: I am the Lord. 7. The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover: she is thy mother; thou shalt not uncover her nakedness. 8. The nakedness of thy father's wife shalt

thou not uncover: it is thy father's nakedness. 9. The nakedness of thy sister, the daughter of thy father, or daughter of thy mother, whether she be born at home or abroad, even their nakedness thou shalt not uncover. 10. The nakedness of thy son's daughter, or of thy daughter's daughter, even their nakedness thou shalt not uncover: for theirs is thine own nakedness. 11. The nakedness of thy father's wife's daughter, begotten of thy father (she is thy sister), thou shalt not uncover her nakedness. 12. Thou shalt not uncover the nakedness of thy father's sister: she is thy father's near kinswoman. 13. Thou shalt not uncover the nakedness of thy mother's sister: for she is thy mother's near kinswoman. 14. Thou shalt not uncover the nakedness of thy father's brother: thou shalt not approach to his wife: she is thy aunt. 15. Thou shalt not uncover the nakedness of thy daughter-in-law: she is thy son's wife: thou shalt not uncover her nakedness. 16. Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness. 17. Thou shalt not uncover the nakedness of a woman and her daughter: neither shalt thou take her son's daughter, or her daughter's daughter, to uncover her nakedness; for they are her near kinswomen: it is wickedness. 29. For whosoever shall commit any of these abominations, even the souls that commit them, shall be cut off from among their people."

Lev. xx. 11. "And the man that lieth with his father's wife, hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them. 12. And if a man lie with his daughter-in-law, both of them shall surely be put to death: they have wrought confusion: their blood shall be upon them. 14. And if a man take a wife and her mother, it is wickedness: they shall be burned with fire, both he and they; that there be no wickedness among you. 17. And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness, and she see his nakedness, it is a wicked thing; and they shall be cut off in the sight of their people: he hath uncovered his sister's nakedness: he shall

bear his iniquity. 19. And thou shalt not uncover the nakedness of thy mother's sister, nor of thy father's sister: for he uncovereth his near kin: they shall bear their iniquity. 20. And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness: they shall bear their sin: they shall die childless. 21. And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness: they shall be childless."

Deut. xxii. 30. "A man shall not take his father's wife, nor discover his father's skirt."

Deut. xxvii. 20. "Cursed be he that lieth with his father's wife, because he uncovereth his father's skirt. 22. Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother. 23. Cursed be he that lieth with his mother-in-law."

This is brief: it is also clear. It is the entire law on the subject—the only one ever known to have been given to man, and the only one by which man can be justly judged, either in this life or in that which is to come.

It will be distinctly observed that there is here a very emphatic prohibition of marriage with a deceased brother's wife—one of those flagrant enormities of the age which it is the main object of my present treatise remorselessly to condemn. "Thou shalt not," says the edict, "uncover the nakedness of thy brother's wife: it is thy brother's nakedness." This surely admits of no dispute. By and bye, I shall have occasion to discuss it more minutely, and to urge it more strongly.

Let me, meanwhile, in order to clear the ground, state generally what are regarded as the principles on which the law of Incest is to be interpreted. The interpretations are numerous, and the commentaries and glossaries abundant. I believe, however, that there is one, and only one, which may be said to have had, and to still have, the sanction and support of all Christian bodies from the earliest ages down to the present time. It has been drawn up in various forms and at various times: the latest, and probably the best summary, however, is that adopted by Mr Dwight,

an American, in his able work, "The Hebrew Wife." Mr Dwight unfolds and explains the principles that he believes lie at the root of the Mosaic Law in the matter of Incest. Referring to the passages I have just quoted, he says:—

"First, The intercourse here prohibited is sexual intercourse.

"This will doubtless be admitted. If not, the phrases used in the law to explain it,—to approach to, to uncover the nakedness, to take, and to lie with—place this point beyond controversy.

"Secondly, The four phrases used to denote this intercourse have one and the same meaning. This, too, will probably be conceded; but if not, the proof is at hand. The first three of the phrases occur in Lev. xviii.; the last three in Lev. xx.; the second and third in Deut. xxii.; the second and fourth in Deut. xxvii.

"In Lev. xviii. 6, which is the general summary of all the particular prohibitions, the prohibited intercourse is pointed out by the phrase—to approach to. In the particular prohibitions following, all included in the general summary, this prohibited intercourse is pointed out by the phrases—to uncover the nakedness, to take, and to lie with. The first phrase, therefore, has the same meaning with each of the other three, and they of course with each other. Again, in Lev. xviii. 14, the phrase—to uncover the nakedness, is explained by the phrase, to approach to; in Lev. xx. 11, by the phrase—to lie with; and in Lev. xx. 21, by the phrase—to take. These four phrases, then, as used in this law, have the same identical meaning.

"Thirdly, The sexual intercourse here prohibited is every kind of sexual intercourse, but especially that of marriage.

"This will be evident from the following considerations:—

"1. From the direct meaning of the phrases employed to describe it. There is obviously nothing in either which limits its application to fornication and adultery, rather than to marriage. Thus the man who has conjugal intercourse with his sister, or his brother's wife, as fully and inevitably

approaches to her, takes her, uncovers her nakedness, and lies with her, as the man who commits fornication or adultery with her. The very terms of the prohibition, therefore, include every species of sexual intercourse.

"2. From the use of these phrases in the Scriptures at large.

"(1.) To approach to, occurs nowhere but in Lev. xviii. 6 and 14; both of which are now under discussion.

"(2.) To uncover the nakedness, is used in three instances to denote conjugal intercourse, Lev. xviii. 18; 1 Sam. xx. 30; and Isaiah lvii. 8. In two instances, it refers to unlawful intercourse, Ezek. xvi. 36, and xxiii. 18. The phrase is therefore general.

"(3.) *To take*, in Hebrew, when connected with *a woman*, is the appropriate Hebrew phrase for *to marry a wife*. To take, used absolutely, denotes the same thing: Gen. xxxiv. 9, 16, 'And take our daughters unto you, and we will take your daughters to us.'. Deut. xx. 7, 'Hath betrothed a wife, and hath not taken her.' 1 Chron. xxii. 22, 'And their brethren the sons of Kish took them.' The instances of this kind are numberless. The only apparent exception to this use is in Ezek. xvi. 32, 'But as a wife that committeth adultery, that taketh strangers instead of her husband.' Here, however, to take, is used with reference to its connection with her husband (that taketh not her husband, but strangers), and not independently of its reference to marriage. The phrase to take, therefore, is in all instances used with reference to marriage, and in all but one denotes to marry.

"(4.) To lie with, denotes every species of sexual intercourse:—

"[1.] Marriage, Gen. xxx, 15, 16; Num. v. 20; 2 Sam. xi. 11.

"[2.] Fornication, Exod. xxii. 16; Deut. xxii. 23, 28.

"[3.] Adultery, Gen. xxxix. 7; Lev. xviii. 20; Num. v. 20.

"[4.] Rape, Deut. xxii. 25; 2 Sam. xiii. 14.

"[5.] Incest, Gen. xix. 32, 34.

"[6.] Sodomy, Lev. xviii. 22; xx. 15.

"[7.] Bestiality, Lev. xviii. 23; xx. 15.

"[8.] Intercourse, generally, Lev. xv., *passim;* Judges xx. 11.

"When used without any thing, in the phraseology or the story, to qualify or limit its meaning, this phrase is always general; denoting any and every species of sexual intercourse.

"From the scriptural use of these four phrases, therefore, it is evident that these prohibitions are not limited to incestuous fornication or adultery, but include marriage also; and from the use of the phrase 'to take,' it is clear that incestuous marriage is the intercourse especially prohibited; the declared unlawfulness of that, involving, of course, and *a fortiori*, the unlawfulness of incestuous fornication and adultery.

"3. From the meaning of those phrases in the law itself.

"Lev. xviii. 18. 'Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness beside the other, in her lifetime. 17. Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter, or her daughter's daughter, to uncover her nakedness; for they are her near kinswomen: it is wickedness.'

"Lev. xx. 14. 'And if a man take a wife and her mother, it is wickedness.'

"The first of these passages has received two different interpretations: both agreeing that the prohibited intercourse is marriage: but the one regarding the passage as prohibiting polygamy, and the other incest. The first of these interpretations is:—If thou hast a wife, thou shalt not marry another wife until after her death, but then thou mayest. The second interpretation is: If thou hast a wife, thou shalt not marry her sister until after her death; for it will vex her; although thou mayest marry another woman, and after her death her sister also. Now, if the intercourse here forbidden is not marriage, but fornication

or adultery, then the prohibition, according to the first interpretation, will read thus:—If thou hast committed fornication or adultery with one woman, thou shalt not afterwards commit fornication or adultery with another woman, during her lifetime, for it will vex her; but after her death thou mayest. According to the second interpretation, it will read thus:—If thou hast committed fornication or adultery with one woman, thou shalt not commit fornication or adultery with her sister, until after her death, for it will vex her; although thou mayest commit fornication or adultery with a woman who is not her sister; and after her death with her sister also.

"The second of these passages, on the supposition that marriage is not here prohibited, will read thus:—If thou hast committed fornication or adultery with a woman, thou shalt not afterwards commit either with her daughter, or her grand-daughter; for they are her near kinswomen.

"The third of these passages, on the same supposition, will read thus:—And if a man shall commit fornication or adultery with a woman and her mother, it is wickedness.

"A construction involving these consequences will not be seriously contended for as a valid construction of the law of God.

"4. From the language of one section of the law, compared with the language of a subsequent statute, partially or conditionally repealing it.

"The section of the law here referred to is Lev. xx. 21. 'And if a man shall take his brother's wife, it is an unclean thing.' The partially and conditionally repealing statute is in Deut. xxv. 5, 10. It was made with a special reference to the Levitical law of genealogies and descents. It directs a man, in the given circumstances, 'to go in unto the wife of his deceased brother, and take her to him to wife;' and then says—'If he like not to take his brother's wife,' etc. To take, and to take to wife, in the repealing statute, then have one meaning; and no one will deny that to take has the same meaning, both in the enacting and repealing statutes. It means, therefore, to take to wife, in both.

"5. From the interpretation always put upon these phrases by the Israelites. Throughout the whole of their history, so far as that history is recorded, the Israelites uniformly regarded the prohibition as a prohibition of marriage. They were certainly not inclined to works of supererogation, and doubtless may be regarded as best acquainted with the drift of their own laws, and as the best interpreters of their langauge.

"6. From the interpretation always put upon these phrases by Christian churches and governments. They have uniformly regarded this prohibition as a prohibition of marriage. We have thus a uniform construction of the law for more than three thousand years.

"7. If this prohibition be not a prohibition of incestuous marriage, no marriages are incestuous; because none are prohibited, except by this law. Of course, it is lawful to marry a mother or daughter, a sister or grand-daughter. And as polygamy was, in the view of those whom I oppose, lawful in Israel, an Israelite might lawfully have had his grandmothers, and mother, and daughters, and sisters, and grand-daughters, as his wives, at the same time.

"8. If marriage between persons within the specified degrees is not unlawful, then fornication between persons within those degrees is not more unlawful than between strangers. By the Levitical law, the man guilty of fornication with a woman, not near of kin to him, was compelled to marry her, provided her father wished it; but if not, he was obliged to pay to the father a sum of money, equal to what her marriage-portion would by law have been. By the law of incest, fornication with one near of kin, for example with a sister, was punished with death. I then ask, why is fornication with a sister more criminal than with a stranger, if marriage with a sister is as lawful as with a stranger? It is not owing to difference of propinquity; for it is identically the same in marriage as in fornication. It is not owing to the fact that there is sexual intercourse between a brother and sister, for that

exists in both cases. Neither is it owing to the fact that the intercourse is fornication; for it is as truly and as fully so with a stranger as with a sister. Incestuous fornication in itself, therefore, involves no more turpitude than that between strangers.

"But it will be said that, although the fornication in the two cases was equally criminal, yet a severer punishment was necessary for that which was incestuous, to prevent the continual occurrence of it in families.

"This account of the subject is wholly inconsistent with the language of the law. The intercourse with a sister, as well as with every other kinswoman prohibited in the law, is called 'a wickedness,' 'an abomination,' 'an abominable custom;' and is spoken of as one of the crimes for which the land of Canaan vomited out its inhabitants. But this is not said of ordinary fornication.

"In incestuous fornication, also, detection was almost of course certain, whereas in incestuous adultery it was exceedingly difficult; yet the punishment of adultery, whether incestuous or ordinary, was equally severe; while that of fornication, if incestuous, was death; and only a fine if it was not incestuous. This immense difference could not have existed, in two cases of equal criminality, where detection trode closely on the heels of transgression.

"The scheme alleged, also, would have been wholly incomplete. The language of the law of incest, thus interpreted, was: You may marry your sister, your daughter, or your mother as innocently as a stranger. If you commit fornication with a stranger you shall be fined. Fornication with your sister, or with those near of kin, is no more criminal than with a stranger; yet there is greater danger that you will commit it. Therefore, if you do, you shall be put to death. No law, speaking such a language, could possibly answer its object. Let the consciences of men be once satisfied that sexual intercourse, as such, with their nearest connections, is no more criminal than with strangers, and incest will become equally common with fornication and adultery. No matter what laws are

made, or what punishments threatened, if you remove the consciousness of deep criminality, you also remove, under any government, not completely despotic, the possibility and the dread of punishment; for it is only the enormous guilt of particular crimes which leaves the human conscience satisfied when exemplary punishment is inflicted.

"Why is not the crime of incest now prevalent? Why are our houses pure, and our families innocent? It is because the law of God has placed a guard against the human passions, in that strong sense of guilt, in that instinctive horror at the bare thought of sexual intercourse with our near connections which is impressed on our minds with the force of a second nature. 'This restraint breaks down every propensity to incestuous commerce, and stifles those inclinations which nature, for wise purposes, has implanted in our breasts at the approach of the other sex. It holds the mind in chains against the seductions of beauty. It is a moral feeling in perpetual opposition to human infirmity. It is like an angel from heaven, placed to guard us against propensities that are evil. It is that warning voice which enables you to embrace your daughter, however lovely, without feeling that she is of a different sex. It is that which enables you, in the same manner, to live familiarly with your nearest female relations without those desires which are natural to man.' * Remove this sense of guilt, and families are dissolved. Children, instead of finding a perpetual home under the parental roof, would, at an early age, be banished from its threshold. The sister could not approach her brother without fear of impurity. The father would find a rival in every son, and the mother in every daughter.

"9. If the law of incest did not forbid incestous marriage, it was useless.

"The Israelities had two general laws forbidding fornication and adultery in all cases, as well with strangers as with relations. What necessity, then, was there of particular statutes forbidding them with relatives? It

* Lord Erskine.

may be said that the punishment of these offences, when incestuous, is more severe. But this is not true of adultery. When, therefore, it is said, Leviticus xx. 11, 'He that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death;' why add, 'And the man that lieth with his father's wife, both of them shall surely be put to death;' as well as numerous sections of a similar character, if the latter be mere prohibitions of adultery? What would be thought of the wisdom of a legislature which should enact a similar statute with regard to any other crime; for example, that of horse-stealing: 'He who steals the horse of any person shall be imprisoned three years; he who steals his father's horse shall be imprisoned three years; he who steals his brother's horse shall be imprisoned three years; he who steals the horse of his father's brother shall be imprisoned three years;' and so on through a succession of thirty-three relatives? Is it not, then, equal folly to enact, with regard to adultery: 'He who commits adultery with any woman shall be put to death; he who commits adultery with his mother shall be put to death; he who commits adultery with his brother's wife shall be put to death; he who commits adultery with his father's brother's wife shall be put to death;' and so on through an equal succession?

"10. If the law of incest did not prohibit incestuous marriages, its only effect was to weaken the force of the general statute respecting adultery. Every thing is lawful which is not prohibited by some law; and every thing is lawful, so far as a given law is concerned, which that law does not prohibit. And the more particular and circumstantial the terms of a penal law are, as the prohibition of the given offence is less general, so the stronger is the implication that the conduct, under different circumstances, is lawful. A law forbidding fornication with females under twenty years of age, and assigning their age as the ground of the prohibition, would give rise to a strong implication that with those who were older it was lawful.

"The bare recitation of several of the prohibitions in

question, altered to adapt them to the scheme which I oppose, will set the subject in a convincing light.

"None of you shall commit adultery with any that are near of kin to him.

"Thou shalt not commit adultery with thy mother; for she is thy mother; thou shalt not commit adultery with her.

"Thou shalt not commit adultery with thine uncle's wife; for she is thine aunt.

"Thou shalt not commit adultery with thy daughter-in-law; for she is thy son's wife.

"Thou shalt not commit adultery with thy brother's wife; for she is thy brother's wife.

"Thou shalt not commit adultery with a woman and her sister, during her lifetime.

"Thou shalt not commit adultery with a woman and her daughter, nor with her grand-daughter; for they are her near kinswomen.

"And if a man commit adultery with a woman and her mother, it is wickedness.

"Who does not see, from bare inspection, that the limitation of the prohibition to these cases of propinquity with the regular assignment of the propinquity in each case as the reason why the connection is wrong, and why it is prohibited, carries with it to the mind an almost irresistible implication, that where propinquity did not exist, such connection was lawful? Is any one ready to charge such a mode of legislation on God?

"11. The law of incest, established in the Koran, furnishes a striking commentary upon the gross licentiousness of the opposite interpretation. Mahomet had the Arabic translation of the Old Testament, and often made use of it in writing the Koran. In the fourth chapter of that work, he says: 'Marry not women whom your fathers have had to wife, for this is uncleanness, and an abomination, and an evil way. Ye are forbidden to marry your mothers, and your daughters, and your sisters, and your aunts, both on the father's and on the mother's side, and your brother's daughters, and your sister's daughters, and your wives'

mothers, and your daughters-in-law, and the wives of your sons; and ye are also forbidden to take to wife two sisters.'

"This, as far as it extends, is substantially a repetition of the Levitical Law of Incest, accommodated, however, to a state of polygamy, and is in express terms a prohibition of incestuous marriages. It will not be contended that Mahomet was influenced by any violent bigotry against licentiousness. Yet he had too much integrity to foist such an interpretation as that which I am opposing on the Old Testament, and too much purity to enact such a law as that which is here charged on the Lawgiver of Israel."

So much as to the explanation and argument on the principle; now as to the inferential, or, if you choose, logical results. The principle being held to be, that whatever is forbidden in relationship by consanguinity, is also forbidden in the same relationship by affinity; or, in other words, that when Moses forbids aunts and nephews to marry, he forbids the marriage of uncles and nieces as relationships of the same propinquity; or, when he interdicts the marriage of a deceased brother's wife, he, at the same time, interdicts the marriage of a deceased wife's sister—this principle, I say, being conceded, the logical results turn out to be as follows. I give the classification first in lineals, and second in collaterals.

1. LINEALS OF THE FIRST DEGREE BY CONSANGUINITY.

Lev. xviii. 7. "The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover; she is thy mother: thou shalt not uncover her nakedness."

Lev. xx. 11. "And the man that lieth with his father's wife hath uncovered his father's nakedness; both of them shall surely be put to death: their blood shall be upon them."

Deut. xxii. 30. "A man shall not take his father's wife, nor uncover his father's skirt."

Deut. xxvii. 20. "Cursed be he that lieth with his father's wife; because he uncovereth his father's skirt."

In these passages marriage is expressly forbidden

between a son and a mother; but the propinquity is the same between a father and a daughter. They therefore may not intermarry. Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Son, | Mother, |
| *Father.* | *Daughter.** |

2. LINEALS OF THE FIRST DEGREE BY AFFINITY.

Lev. xviii. 8. "The nakedness of thy father's wife shalt thou not uncover; it is thy father's nakedness." †

Lev. xviii. 15. "Thou shalt not uncover the nakedness of thy daughter-in-law: she is thy son's wife; thou shalt not uncover her nakedness."

Lev. xviii. 17. "Thou shalt not uncover the nakedness of a woman and her daughter: it is wickedness."

Lev. xx. 12. "And if a man lie with his daughter-in-law; both of them shall surely be put to death."

Lev. xx. 14. "And if a man take a wife and her mother; they shall be burnt with fire."

Deut. xxvii. 20. "Cursed be he that lieth with his mother-in-law."

Marriage is here expressly forbidden with a step-mother (Lev. xviii. 8), with a step-daughter (Lev. xviii. 17, and xx. 14), with a mother-in-law (Lev. xviii. 17, and xx. 14, and Deut. xxvii. 20), and with a daughter-in-law (Lev. xviii. 15, and xx. 12). Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Step-son, | Step-mother, |
| Step-father, | Step-daughter, |
| Father-in-law, | Daughter-in-law, |
| Son-in-law. | Mother-in-law. |

3. LINEALS OF THE SECOND DEGREE BY CONSANGUINITY.

Lev. xviii. 10. "The nakedness of thy son's daughter, or of thy daughter's daughter, thou shalt not uncover; for theirs is thine own nakedness."

* The implied cases are italicised.

† This passage certainly forbids marriage with a step-mother, because the preceding verse forbids it with an own mother. Several of the passages recited under the last head also forbid marriage with a step-mother.

As a woman is just as near to her son's son and her daughter's son, as a man to his son's daughter and his daughter's daughter, the prohibition of the two latter implies that of the two former. Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Father's father, | Son's daughter, |
| Mother's father, | Daughter's daughter, |
| *Son's son,* | *Father's mother,* |
| *Daughter's son.* | *Mother's mother.* |

Or more concisely, and in more customary language,

| | |
|---|---|
| Grandfather, | Grand-daughter, |
| *Grand-son.* | *Grandmother.* |

### 4. Lineals of the Second Degree by Affinity.

Lev. xviii. 17. "Thou shalt not uncover the nakedness of a woman, and her son's daughter, or her daughter's daughter: it is wickedness." This passage pronounces the propinquity between a grandmother and her grand-daughter (whether her son's daughter or her daughter's daughter) to be so great, that it is not lawful for a man, who is the husband of either, to marry the other. This clause, therefore, in express terms, forbids marriage between a man and his wife's grand-daughter, whether her son's daughter or her daughter's daughter, and between a man and his wife's grandmother, whether her father's mother or her mother's mother. But a woman has identically the same propinquity to her husband's grandson on the one hand, whether his son's son or his daughter's son, and to her husband's grandfather on the other, whether his father's father or his mother's father. Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Father's mother's husband, | Wife's son's daughter, |
| Mother's mother's husband, | Wife's daughter's daughter, |
| Son's daughter's husband, | Wife's father's mother, |
| Daughter's daughter's husband. | Wife's mother's mother, |
| *Husband's son's son,* | *Father's father's wife,* |
| *Husband's daughter's son,* | *Mother's father's wife,* |
| *Husband's father's father,* | *Son's son's wife,* |
| *Husband's mother's father.* | *Daughter's son's wife.* |

Or more concisely, and in more customary language,

| | |
|---|---|
| Grandmother's husband, | Wife's grand-daughter, |
| Grand-daughter's husband, | Wife's grandmother, |
| *Husband's grand-son,* | *Grandfather's wife,* |
| *Husband's grandfather.* | *Grand-son's wife.* |

### 5. Collaterals of the First Degree by Consanguinity.

Lev. xviii. 9. "The nakedness of thy sister, the daughter of thy father or the daughter of thy mother, whether she be born at home or abroad, even their nakedness thou shalt not uncover."

Lev. xviii. 11. "The nakedness of thy father's wife's daughter, begotten of thy father (she is thy sister), thou shalt not uncover her nakedness."

Lev. xx. 17. "And if a man shall take his sister, his father's daughter or his mother's daughter, and see her nakedness, and she see his nakedness: it is a wickedness; and they shall be cut off in the sight of their people: he hath uncovered his sister's nakedness, he shall bear his iniquity."

Deut. xxvii. 22. "Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother."

Each of these passages forbids marriage in express terms between a brother and a sister, both of the whole and of the half blood. Hence,

| | |
|---|---|
| A woman may not marry her | A man may not marry his |
| **Brother.** | **Sister.** |

### 6. Collaterals of the First Degree by Affinity.

Lev. xviii. 16. "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness."

Lev. xx. 21. "And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness: they shall be childless."

These passages, in express terms, forbid marriage between a husband's brother and a brother's wife. But the

propinquity between a wife's sister and a sister's husband is identically the same. Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Husband's brother, | Brother's wife, |
| *Sister's husband.* | *Wife's sister.* |

7. COLLATERALS OF THE SECOND DEGREE BY CONSANGUINITY.

Lev. xviii. 12, 13. "Thou shalt not uncover the nakedness of thy father's sister: thou shalt not uncover the nakedness of thy mother's sister."

Lev. xx. 19. "And thou shalt not uncover the nakedness of thy mother's sister, nor of thy father's sister: for he uncovereth his near kin: they shall bear their iniquity."

These passages expressly forbid marriage between a man and his father's sister or his mother's sister: that is, between a nephew and his aunt; but their propinquity is identically the same as that between a woman and her father's brother or her mother's brother: that is, between a niece and her uncle. Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Brother's son, | Father's sister, |
| Sister's son, | Mother's sister, |
| *Father's brother,* | *Brother's daughter,* |
| *Mother's brother.* | *Sister's daughter.* |

Or more concisely, and in more customary language,

| Nephew, | Aunt, |
|---|---|
| *Uncle.* | *Niece.* |

8. COLLATERALS OF THE SECOND DEGREE BY AFFINITY.

Lev. xviii. 14. "Thou shalt not uncover the nakedness of thy father's brother: thou shalt not approach to his wife: she is thine aunt."

Lev. xx. 20. "And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness: they shall bear their sin: they shall die childless."

The phrase, "an uncle's wife," includes both a father's brother's wife and a mother's brother's wife. This passage, therefore, expressly forbids marriage between a husband's nephew and an uncle's wife. But a wife's niece is just as

near to an aunt's husband; that is, to a father's sister's husband or a mother's sister's husband. In the same manner, a husband's uncle is just as near to a nephew's wife; that is, to a brother's son's wife or a sister's son's wife. In the same manner, a wife's aunt is just as near to her niece's husband; that is, to her brother's daughter's husband and her sister's daughter's husband. These, therefore, are forbidden to intermarry, Hence,

| A woman may not marry her | A man may not marry his |
|---|---|
| Husband's brother's son, | Father's brother's wife, |
| Husband's sister's son, | Mother's brother's wife, |
| *Father's sister's husband,* | *Wife's brother's daughter,* |
| *Mother's sister's husband,* | *Wife's sister's daughter,* |
| *Husband's father's brother,* | *Brother's son's wife,* |
| *Husband's mother's brother,* | *Sister's son's wife,* |
| *Brother's daughter's husband,* | *Wife's father's sister,* |
| *Sister's daughter's husband.* | *Wife's mother's sister.* |

Or more concisely, and in more customary language,

| | |
|---|---|
| Husband's nephew, | Uncle's wife, |
| *Aunt's husband,* | *Wife's niece,* |
| *Husband's Uncle,* | *Nephew's wife,* |
| *Niece's Husband.* | *Wife's aunt.* |

The above are all the marriages prohibited by the Levitical Law of Incest. The following tables exhibit them at one view: those expressly forbidden in Roman letters, and those by implication in italics.

## TABLE I.

| A woman may not marry her | A man may not marry his |
|---|---|
| 1. Son, | 1. Mother, |
| 2. *Father,* | 2. *Daughter,* |
| 3. Mother's husband, | 3. Wife's daughter, |
| 4. Husband's son, | 4. Father's wife, |
| 5. Husband's father, | 5. Son's wife, |
| 6. Daughter's husband, | 6. Wife's mother, |
| 7. Father's father, | 7. Son's daughter, |
| 8. Mother's father, | 8. Daughter's daughter, |
| 9. *Son's son,* | 9. *Father's mother,* |
| 10. *Daughter's son,* | 10. *Mother's mother,* |
| 11. Father's mother's husband, | 11. Wife's son's daughter, |
| 12. Mother's mother's husband, | 12. Wife's daughter's daughter, |
| 13. Son's daughter's husband, | 13. Wife's father's mother, |
| 14. Daughter's daughter's husband, | 14. Wife's mother's mother, |

| | |
|---|---|
| 15. *Husband's father's father,* | 15. *Son's son's wife,* |
| 16. *Husband's mother's father,* | 16. *Daughter's son's wife,* |
| 17. *Husband's son's son,* | 17. *Mother's father's wife,* |
| 18. *Husband's daughter's son,* | 18. *Father's father's wife,* |
| 19. Brother,* | 19. Sister,* |
| 20. Husband's brother, | 20. Brother's wife, |
| 21. *Sister's husband,* | 21. *Wife's sister,* |
| 22. Brother's son, | 22. Father's sister, |
| 23. Sister's son, | 23. Mother's sister, |
| 24. *Father's brother,* | 24. *Brother's daughter.* |
| 25. *Mother's brother,* | 25. *Sister's daughter,* |
| 26. Husband's brother's son, | 26. Father's brother's wife, |
| 27. Husband's sister's son, | 27. Mother's brother's wife, |
| 28. *Father's sister's husband,* | 28. *Wife's brother's daughter,* |
| 29. *Mother's sister's husband,* | 29. *Wife's sister's daughter,* |
| 30. *Husband's father's brother,* | 30. *Brother's son's wife,* |
| 31. *Husband's mother's brother,* | 31. *Sister's son's wife,* |
| 32. *Brother's daughter's husband,* | 32. *Wife's father's sister,* |
| 33. *Sister's daughter's husband.* | 33. *Wife's mother's sister.* |

In this table, the correlatives, who may not intermarry, are placed opposite each other, and numbered alike. In the table which follows, the correlatives are arranged as in our common Bibles.

* Brother and sister, both of the whole and of the half blood, are expressly forbidden to marry.

## TABLE II.

| A woman may not marry her | A man may not marry his |
|---|---|
| * 7. Father's father, | * 9. *Father's mother,* |
| * 8. Mother's father, | * 10. *Mother's mother,* |
| † 11. Father's mother's husband, | † 17. *Father's father's wife,* |
| † 12. Mother's mother's husband, | † 18. *Mother's father's wife,* |
| ‡ 15. *Husband's father's father,* | ‡ 13. Wife's father's mother, |
| ‡ 16. *Husband's mother's father,* | ‡ 14. Wife's mother's mother, |
| * 24. *Father's brother,* | * 22. Father's sister, |
| * 25. *Mother's brother,* | * 23. Mother's sister, |
| † 28. *Father's sister's husband,* | † 26. Father's brother's wife, |
| † 29. *Mother's sister's husband,* | † 27. Mother's brother's wife, |
| ‡ 30. *Husband's father's brother,* | ‡ 32. *Wife's father's sister,* |
| ‡ 31. *Husband's mother's brother,* | ‡ 33. *Wife's mother's sister,* |
| * 2. *Father,* | * 2. Mother, |
| † 3. Step-father, | † 4. Step-mother, |
| ‡ 5. Husband's father, | ‡ 6. Wife's mother, |
| * 1. Son, | * 1. *Daughter,* |
| ‡ 4. Husband's son, | ‡ 3. Wife's daughter, |
| † 6. Daughter's husband, | † 5. Son's wife, |

| | |
|---|---|
| * 19. Brother, | * 19. Sister, |
| ‡ 20. Husband's brother, | ‡ 21. *Wife's sister,* |
| † 21. *Sister's husband,* | † 20. Brother's wife, |
| * 9. *Son's son,* | * 7. Son's daughter, |
| * 10. *Daughter's son,* | * 8. Daughter's daughter, |
| † 13. Son's daughter's husband, | † 15. *Son's son's wife,* |
| † 14. Daughter's daughter's husband, | † 16. *Daughter's son's wife,* |
| ‡ 17. *Husband's son's son,* | ‡ 11. Wife's son's daughter, |
| ‡ 18. *Husband's daughter's son,* | ‡ 12 Wife's daughter's daughter, |
| * 22. Brother's son, | * 24. *Brother's daughter,* |
| * 23. Sister's son, | * 25. *Sister's daughter,* |
| † 32. *Brother's daughter's husband,* | † 30. *Brother's son's wife,* |
| † 33. *Sister's daughter's husband,* | † 31. *Sister's son's wife,* |
| ‡ 26. Husband's brother's son, | ‡ 28. *Wife's brother's daughter,* |
| ‡ 27. Husband's sister's son, | ‡ 29. *Wife's sister's daughter.* |

## TABLE III.

| A woman may not marry her | A man may not marry his |
|---|---|
| Grandfather, | *Grandmother.* |
| Grandmother's husband, | *Grandfather's wife,* |
| *Husband's grandfather.* | Wife's grandmother. |
| *Father,* | Mother, |
| Step-father, | Step-mother. |
| Husband's father. | Wife's mother. |
| Son, | *Daughter,* |
| Daughter's husband. | Son's wife, |
| Step-son. | Step-daughter. |
| *Grand-son,* | Grand-daughter, |
| Grand-daughter's husband, | *Grand-son's wife,* |
| *Husband's grand-son.* | Wife's grand-daughter. |
| Brother, | Sister, |
| *Sister's husband,* | Brother's wife, |
| Husband's brother. | *Wife's sister.* |
| *Uncle,* | Aunt, |
| *Aunt's husband.* | Uncle's wife, |
| *Husband's uncle.* | *Wife's aunt.* |
| Nephew, | *Niece,* |
| *Niece's husband,* | *Nephew's wife,* |
| Husband's nephew. | *Wife's niece.* |

| | |
|---|---|
| * Her own relations by consanguinity. | * His own relations by consanguinity. |
| † Her own connection by affinity. | † His own connection by affinity. |
| ‡ Her husband's relations by consanguinity. | ‡ His wife's relations by consanguinity. |

This table embraces the same relatives as the two preceding, but expressed more concisely; lineals first, and collaterals afterwards. In each triad of relatives, the first is a relative by the individual's consanguinity; the second, by the individual's own affinity; the third, by the consanguinity of the married partner. The law is thus made to have a beautiful mathematical simplicity.

Mr Dwight's conclusions, which it must be admitted are borne out largely, if not fully, by all Christian Churches, and by the laws of our country and by most civilized nations, are thus summarised:—

1. Marriage is prohibited between all lineals and all collaterals of the first and second degrees, both by consanguinity and affinity. The lineals include all, both in the ascending and descending series, with whom marriage, according to the present length of human life, is physically possible. The collaterals include all with whom one associates on the footing of brothers or sisters, of children of brothers or sisters, and of brothers or sisters of parents. Between an individual and these relatives, there is and ought to be all the intimacy of the most pure and confidential love; and the mind in which it dwells ought to prove to it a sanctuary so secure, so holy, that no sensual desire should ever intrude to soil its purity or jeopard its repose. In the sanctions of the law of incest, this very safeguard is furnished to it by God.

2. The second table is the same with that in our common Bibles: comprising identically the same relations, and in the same arrangement, in each column. In the table in the Bible, the six first relations, however, are expressed more concisely and comprehensively: in the first column, by the words grandfather, grandmother's husband, and husband's grandfather: and in the second, by grandmother, grandfather's wife, and wife's grandmother: each of these including two of the relatives in the second table.

3. The number of cases, expressly prohibited, is seventeen; and that of those prohibited by implication, sixteen.

4. Of the express cases, six are by consanguinity, and

eleven by affinity: and of the implied cases, five are by consanguinity, and eleven by affinity.

5. The first column exhibits thirty-three relations which a woman may not marry: of which eleven are her own relations by blood, eleven her own relations by marriage, and eleven her husband's relations by blood. The second column exhibits the same results, *mutatis mutandis*, as to the relations which a man may not marry.

6. Of the twenty-two relations by affinity, which a man may not marry, six of his wife's and five of his own are expressly prohibited; and five of his wife's and six of his own by implication: whereas of the twenty-two relations by affinity, which a woman may not marry, five of her husband's and six of her own are express cases, and six of her husband's and five of her own are implied cases.

7. Wherever a man is forbidden to marry a given relation of his own by consanguinity, he is also forbidden to marry the same relation of his own by affinity, and the same relation of his wife by consanguinity. But he is forbidden to marry no relation of his wife by affinity. In other words, double affinity is not regarded by the law as in any case amounting to a debarring propinquity. Of course, a man has a right to marry the widow of his wife's father, son, brother, uncle, or nephew. The same is true, *mutatis mutandis*, of a woman.

8. The lineals prohibited are eighteen in number, six by consanguinity, three express and three implied; and twelve by affinity, eight express and four implied; the collaterals are fifteen in number, five by consanguinity, three express, and two implied; and ten by affinity, three express and seven implied.

9. The law does not prohibit the intermarriage of collaterals of the third degree by consanguinity; that is, of first cousins: nor of course those more remote. Many, however, hold the intermarrying of first cousins to be physically inexpedient.* Where this feeling is strong enough to counteract any propensity that may exist in favour of such marriages, it will of course prevail. But God has not

* See Appendix.

forbidden them. There must be obviously a partition wall, somewhere between the inner and the outer courts of this temple, which no unhallowed foot may pass; and that which is actually erected appears to us to be erected on the very line of demarcation which infinite wisdom and purity must have drawn. At all events, when we find that God has erected it where it is, we are satisfied that it is not actually prohibited.

The whole case is thus stated, as it is generally understood and adopted by professing Christian Churches. I do not say that every one will fully agree with it, because some think that there is an essential difference between matters expressly prohibited and matters not, except by inference, prohibited at all; but I am strongly of opinion that all will agree with me that there is all the difference in the world between concubinage or marriage with a deceased brother's wife, who has had conveyed to her a portion of the deceased brother's vital essence of being, and concubinage or marriage with a deceased wife's sister, who is, except by affinity, as pure and free as her sister was before her marriage. No one will dispute the logical bearings of the argument as I have given it: and in regard to marriage with a deceased wife's sister, it is enough for me say, in the meantime, or rather for me to shew, that among the Jews, and among most Christian nations, including our own, the burden of moral character and influence has been against marriage with a deceased wife's sister; that the laws of this nation are decidedly opposed to it; and that, therefore, if unquestionably against the lesser vice or crime public opinion lifts its voice, and public statutes inflict their penalties, the greater is the vice or crime, and the more severe ought to be the penalties inflicted on those incestuous wretches who, to gratify their own selfish and unlawful lusts, dishonour God and man, their own family, and their own friends, by living with or marrying their own brothers' wives.

Let us now see what are the leading testimonies as to marriage with a deceased wife's sister, commencing first with those of the Jews.

## CHAPTER III.

### THE JEWS ON THE MOSAIC CODE.

THE Jews, I need not say, being those to whom the Law was originally given, ought to be regarded as among the best of its interpreters; at the same time we are bound to recollect, on the authority of Christ and His Apostles, that they were a stiff-necked and rebellious people, and that too frequently they made void the law of God by their traditions, teaching for doctrines the commandments of men. Well, what say the Jews, through their most eminent Rabbis, those who have made the history of their country and its literature the subject of their special study? Here is what Maimonidas says, in his "More Nevochim," pars. iii. cap. xcix.:—

"It was prohibited to marry a woman and her daughter, also the wife of a father, and the wife of a son; because these are the uncovering of the nakedness of one body to the nakedness of the root and branch. *Brothers are to one another as the root and branch;* hence, because the sister has been prohibited, so also has been prohibited the sister of the wife, and the wife of the brother; since this is the case of two individuals who are as root and branch in the conjunction of a third body."

I might quote other authorities. Dr James Gibson, Professor of Systematic Theology and Church History in the Free Church College, Glasgow, has devoted a valuable chapter to the subject in his very able work,—"The Marriage Affinity Question; or Marriage with the Sister of a Deceased Wife, fully discussed, in the light of History, Ecclesiastical and Civil Law, Scripture, Reason, and Expediency"—and from it I quote all that seems necessary to the purpose I have in view. He says:—

"In so far as the opinions of the Jews are made available in this controversy for what they are worth, they are to be found embodied in those of the Karaites and Talmudists. They are fully expounded in the learned Selden's works, and especially in his "Uxor Ebraica," lib. i. Both sects held the general principle that certain marriages were forbidden, as well by affinity as by consanguinity. The Talmudists professed to find eighteen forbidden in express words, or by undoubted consequence, from the sacred law, partly in the name of consanguinity, and partly in the name of affinity or propinquity. Selden (lib. i., cap. i.) says:—'As to what belongs to the first species of forbidden marriages, or those which are forbidden in name of consanguinity or affinity, the decisions of the Talmudists and Karaites differ. With the Talmudists, according to the *express words* of the *Mosaic Law*, and that *which so follows from them by necessary consequence* that it must in all reason be admitted *(ut non admitti nulla cum ratione queat)*, there are held for forbidden, partly in name of blood, partly in name of affinity, *only* eighteen (in which also mother, stepmother, sister, are equally forbidden to them by natural law, or by the patriarchal law), as in the following scheme.' 'They were so forbidden,' he adds, after giving the scheme in which the sister of a wife is included, 'that only fifteen are forbidden in the express words of the sacred law, and three remaining ones, they say, by necessary consequence. Those fifteen are exhibited in the scheme in capital letters,' and the sister of the wife, SOROR UXORIS, is one of them. They quote the following passages in proof—Lev. xviii., from verse 6 to 18; and xx., verses 14, 17, 19, 20, 21; Duet. xxii. 30; xxvii. 20, 22, 23. Any one who will consult these passages, especially Lev. xx. 21, and remember that they held prohibitions in affinity equal to those in consanguinity, can have no doubt of their views. In addition to these, there was what they called secondary women, whom it was forbidden to marry by the decrees of the Scribes, and the institutions of their ancestors. Of these there were twenty, some forbidden under the head of blood, and some

of affinity. The differences between the Talmudists and Karaites it were more tedious than profitable to determine; but on the point of the marriage of a man with the sister of a deceased wife, they seem not to have greatly differed. Certain it is, there were Talmudists who held the same view as the Karaites. An attempt has been made to throw contempt on the Karaites as a small despised sect, for what reason we know not, except that the advocates for license on the marriages in question think they are more express than the Talmudists against them; though this does not very clearly appear. They professed to decide, in contradistinction to the Talmudists, solely and simply 'according to the literal and simple sense, neither adding nor diminishing.' Hence they were called Scripturists. They carried the number *so* forbidden greatly beyond what the Talmudists admitted. The Talmudists slandered them as Sadducees.* It was chiefly on this general question that the disputes between these two sects and their sub-sects existed. The more ancient sects of the Karaites and their followers held that the relations of the wife were equally forbidden to the husband as his own, on the ground that the *unity of person* was such between man and wife that they were called *insiti*, or engrafted; and that even when divorce took place, that unity of *person* and relationship still subsisted to the third instance of marriage, and regulated all the relationships accordingly, and only ceased with the fourth. The more recent Karaites rejected this latter notion as extravagant. Nevertheless, the first of the sect who rejected this notion, taught that the whole prohibition of incest, according to the sacred law, in its fundamental principles and rules, consisted of five classes; in the third of which is that of a man marrying the sister of his wife; 'so that,' adds Selden (plainly intending to say, notwithstanding the strictness of their rule of interpretation), 'the Karaites do not doubt but that the sister of a wife, whether dead or remaining, is to be held as in the forbidden degrees.' He adds, 'which the Talmudists do not admit.'

* See Selden's "Uxor Ebraica," lib. i., cap. iii.

That is—if we do not altogether misapprehend Selden's meaning in the passage already quoted—they did not admit that they were forbidden in express words; while nevertheless the Talmudists did not deny that such marriages were forbidden, but maintained that they were forbidden by necessary consequence. I can discover no other way of reconciling the *apparently* contradictory statements of Selden on the point. Any one reading his whole discussion, and not catching at an isolated sentence, will see there is no contradiction.* He refers in the margin to his work, 'De Jure Naturali et Gentium Juxta Disciplinam Ebræorum,' lib. v., cap. 10. On referring to that work, it will be seen that the same question is discussed, viz., whether these degrees held by them as forbidden, among which the sister of a wife was one, could be determined by the law of nature and nations, *according to the discipline of the Hebrews*, and whether affinity was constituted by adultery and fornication. They held that they were; and that, though the wife were divorced, it was prohibited to marry the full or the half-sister; 'for they never doubted (viz., as to the point of adultery or fornication in the case of a wife divorced constituting this prohibition by affinity) concerning the sister of the deceased wife, because the words of the law concerning the WIFE are, *while she is alive*,' and therefore divorce does not alter the matter. This is the point raised where the preceding words are used. If any one will adduce plain passages from the Talmudists to the contrary, we shall be content to plead ignorance as our apology; but, meantime, this has not been done by any of the writers on the opposite side; and though it were done, it might prove what the opinions of the Talmudists were, but would no more than other vain traditions alter the sense of Scripture."

"Since writing the above, I have seen the observations of Dr Janeway of America on the point as stated by Selden. He is justly dissatisfied with the 'Puritan,' another

* Bœhemer says of Selden, that he obscured everything by the multitude of his parentheses.

American writer, who supposed he had full proof in the words of Selden already quoted—viz., '*Quod Talmudici non admittunt*'—for saying, in opposition to the Karaites, 'the Talmudists teach otherwise.' Dr Janeway does not seem fully to have apprehended Selden's meaning in the passages we have referred to; but, in referring to it, he tries to find some authority for Selden for what in reality he does not state, and he incidentally quotes a passage from Philo Judæus, who flourished about the commencement of the Christian era, and which has an important bearing on the historical question before us. It is as follows:—'Again, Moses does not permit a man to marry two sisters, either at the same time or at different times, even though he may have put away the one whom he took first in marriage; for, during the lifetime of her that remains with her husband, or of her that has been sent away, whether she remains a widow or be married to another man, he accounted it UNHOLY for her sister to take the place of her that has been unfortunate, teaching them not to violate the right of consanguinity, nor to rise by the fall of one so united by descent, nor to delight and exult in being served by her sister's enemies, and in serving them in him; for from these things arise violent jealousies and fierce contentions, producing an unspeakable multitude of evils.' Dr Janeway argues justly that Philo does not hint at the lawfulness in this passage of marrying the sister of a deceased wife. He evidently held this connection in some circumstances 'unholy,' and a violation in some form or other of the right of consanguinity. I may notice here that, in another part of his work, and for a different purpose, Dr Janeway quotes, from the Targum of Jonathan Ben Uzziel, a passage, of which the following is a translation, on Lev. xviii. 16:—'Turpitudinem uxoris fratris tui non revelabis vivente fratre tuo, aut *post mortem* ejus si habeat filios: *nuditas fratris* tui est.'—'The shame of thy brother's wife thou shalt not reveal during his life, or *after his death if he have children:* it is the nakedness of thy brother. It is clear from this passage that he held it unlawful, on account of the incestuous sin involved, to marry

his brother's widow if she had had children to the deceased brother; because, if it had been for the reason pleaded in modern times for such marriages, a *widow* and *her* children had as much need of a *brother's* protection by marriage, as a *widower* and *his* children of a sister's—clearly showing also that the leviral law was limited to the peculiarity of raising up seed to his brother."

He closes a lengthened argument on the subject as follows:—

"It is universally admitted that there was a prohibition among the Jews *against marrying the sister of a wife.* Let this fact be pondered. The parties opposed to us admit and contend that they were *not* forbidden to marry more wives than one, if not sisters. Why, then, did they make a distinction? If there was nothing wrong *in itself*, why this prohibition? Because, they say, of the vexing of the first sister married. But what is there in the mere matter of first or second that gives her humour a title to be held sacred, so as to be the subject of a Divine law to shelter it, and all the alleged rights of the husband and the other sister to be counted as nothing, merely because the first might be vexed, without any ground in reason or morality? For, by the principles of our opponents, if it be merely another wife her husband takes, she had no right to be vexed. But is there any antecedent probability that two sisters will be more quarrelsome about the enjoyment of a common right or benefit than any two other women? Certainly they *ought* not to be so. But if there was nothing wrong, according to the Mosaic law, in a man having two or more wives at a time, and nothing wrong IN ITSELF in their being literal sisters, and they and the husband are pleased to risk the consequences, why infringe the liberty which, according to the Libertarians, God has given, and for which they contend so zealously, and which they allege no one has a right to take from them? It is a simple absurdity to say that because Leah and Rachel quarrelled, all other sisters would certainly quarrel, while all other women, not sisters, would agree very well, or at least

needed no law on the subject; and, at all events, though they might quarrel in thousands of instances, as undoubtedly they have done in such a case, yet *the vexing* is to be of no possible consequence in the latter case at all, though all and in all in that of an ill-humoured and selfish sister. But even this absurdity, though it were sustained as an argument, will not meet the case. It was universally admitted by the Jewish casuists (see Selden's 'De Jure Naturali et Gentium, Juxta Disciplinam Ebræorum,' lib. v., cap. 10) that a man was not permitted to marry the sister of his living wife, though the living wife had been lawfully divorced—*repudiata*—rejected, and thrust out. Why? There was no danger of quarrelling then. They might then be far enough asunder; and, at all events, they would not be under the same roof. The plain truth is, that there is always *a basis of wrong-doing running through the whole transaction of the marriage of two sisters, in any circumstances or at any time*, that even divorce did not permit, when the first wife had even been an adulteress; and what could make it right when she was dead, without having done any wrong, cannot well be discovered; though perhaps the ingenuity of Libertarians may suggest something. And to help them out of a difficulty, since the first wife is apt to think she has a claim against a sister by the circumstance of being first, why not—since there is nothing wrong in itself, according to them, either in marrying two or more sisters, and as many wives as they pleased—why not marry these sisters at one and the same time, and put them on an equality, and put an end to all claims to precedence on the part of one and all of them?"

To a similar effect, though not quite so positive, is the *dictum* of the Rev. Dr Lindsay, Professor of Sacred Languages and Biblical Criticism to the United Presbyterian Church, in his able work, entitled "Inquiry into the Christian Law as to the relationships which bar Marriage." The learned author says:—

"Those who are pleading for a change of the Marriage Law of Great Britain, attach great importance to the opinion of

the Jews, who, they tell us, have in general held the lawfulness of marrying sisters in succession; but this, I confess, does not appear to me a consideration possessed of much weight. The fact is that, with regard to the opinions of the Jews in very ancient times, we are to a great extent in the dark. Still it must be remembered that, coming down to a period subsequent to the Christian era, one whole sect among the Jews, and those by no means men of little name, viz., the Karaites, were decided in their opposition to marriage with a wife's sister. They maintained that the substance of the law of incest lay in Lev. xviii. 6, and that the various particular prohibitions which follow this general principle were to be considered as specimens of the extent to which kindred was to be counted; and, accordingly, they supplied all the analogous cases, and held that the law which forbade a man to marry his brother's wife, equally debarred him from marrying his wife's sister. And they denied that the 18th verse of the chapter warranted any inference in favour of this connection.* With regard to the Talmudists, again, it is by no means clear that they were unanimous in favour of the lawfulness of marriage with a wife's sister, though in general they approved of it. It is certain, however, that Maimonides, one of the greatest names among the Jews, declares that this connection was forbidden as well as marriage with a brother's wife. This is explicitly stated in his *More Nevochim*, part iii., chap. xlix. It is also stated, though not so explicitly, in his book of prohibitive precepts, Nos. 344, 345. In appealing to the Jews, therefore, what have we after all but Jew against Jew?

"But even if all the Jews had been of the same mind, are they our standard? Is it not a fact that they have utterly perverted multitudes of passages in the Old Testament? Does not our Lord himself declare that in his day they made void the law of God by their traditions, and taught for doctrines the commandments of men? And are we to imagine that they greatly improved, after they rejected the

* Selden's *Uxor Hebraica*, pp. 539–542.

Divine teacher whom God sent to instruct them? With regard to the signification of particular Hebrew words and phrases, the testimony of an ancient Jew is entitled to some deference; but with regard to the exposition of particular passages of Scripture, and more especially with regard to inferences deduced from Scripture, there is no reason at all why we should follow them. Do not our Lord's words rather suggest the idea, that we should be suspicious of any views which are peculiar to them?"

## CHAPTER IV.

### THE CHRISTIAN CHURCH ON THE MOSAIC CODE.

I HAVE already stated that, if the Mosaic Code as to Marriage is not binding, like the Ten Commandments, on all nations and peoples, we have no other,—we are left altogether to natural law. The Christian world is without a written law as to incest, except it be found in the law of Moses. It lays down no new code; it does not even recite the old one; the inference, therefore, would seem to be clear that in this, as in other high moral obligations, Christ came to fulfil the law, not to destroy or impair it. There are just two cases, illustrative of the opinions held on two flagrant cases of vice, mentioned in the New Testament; the first in reference to the adulterous and incestuous marriage of Herod with his brother Philip's wife, of which I shall have more to say in a subsequent chapter; and the second, mentioned in 1st Corinthians, v. i., in which the Apostle Paul condemns most severely a man who had the temerity to live with, or marry, his father's widow or wife. On this latter case, the judgment with regard to which proceeds on the assumption that the Levitical code was known by the Corinthians, and ought to have been duly observed and honoured by them—that, in point of fact, it was the recognised standard of the early Christian Church, we have the following remarks by Dr Lindsay:—

"If the father was in life, and if the Apostle is to be understood as saying nothing against marriage with a father's widow, as some would have us believe, then it was the adulterous character of the connection, and not its incestuousness, which provoked his indignation; and it would have much better answered his purpose to mention that the first husband was living, than to state that he was father to the second. This was quite an immaterial cir-

cumstance, unless there was supposed to be incest in a son's ever having to do with a father's widow. If marriage with a father's widow was quite allowable, then it is difficult to see how connection with her during the father's lifetime could be aught else than adultery. You only give its full force to the Apostle's language, when you suppose that, whether the father was dead or alive, the son's connection with his step-mother was incest. It is relationship only, and not a still subsisting marriage, that is mentioned by the Apostle as the ground of his censure.

"But all the probabilities are decidedly in favour of the supposition that the father was dead. Can it be imagined that a Christian church, and that, too, a church planted by an Apostle, and keeping up correspondence with an Apostle, would retain persons in its communion who were living in habitual adultery, and would be so far from feeling that there was anything wrong in their procedure, as actually to be puffed up? This would argue a grossness of corruption altogether surpassing belief. A father and a son openly and avowedly cohabiting with the same woman, and yet retained, not only without scruple, but even with a degree of pride, in the communion of the church!! The thing is inconceivable. If it really was so, then very fairly may it be made a question whether the Church of Christ was not greatly more corrupt in the days of the Apostles than ever it has been in any age since. What church at the present moment, degenerate as our age is said by many to be, would avowedly and boastfully retain in communion a father and a son who were both husbands to the same woman? If the apostolic church did so, then, so far from being a model, it was the vilest church that has ever existed. If the father was dead, then we can conceive that the son and his friends might, from want of proper attention to the subject, deceive themselves into the idea, as not a few do at the present moment, that no barrier to his marriage with the widow existed, there being no consanguinity; and thus through ignorance, though not by any means an ignorance free from culpability, the evil might spring up, without

proving the church to be utterly corrupt. But if the father was living, then the church was a very sink of pollution; for we must suppose that the son and the wife plunged with open eyes, there being no room for self-deception with regard to adultery, into the very depths of vileness, and that the whole church applauded their conduct. 'They mourned not, but were puffed up.' Without a doubt the father was dead.

"Great interest, however, has been felt in the life of this father, with the view of securing to sons the liberty of marrying their step-mothers when they become widows; and an argument to show that he was still alive has been grounded upon 2 Cor. vii. 12, where mention is made of one that did the wrong, and of one that suffered the wrong. Now the one that suffered the wrong, it is said, must be the father, and therefore he must have been surviving. The conclusion, however, is utterly devoid of force. The party suffering the wrong has been supposed by many, altogether irrespectively of the question before us, to be the Apostle himself, who felt his honour tarnished by the misconduct of a church which he had planted. Others have imagined that the expression is general, and means any one that might have sustained injury from the proceeding, as, for example, another brother or a sister, whose respectability and credit would be compromised by the misconduct of their brother and mother. Or even, if you suppose that the party suffering the wrong was the father, this does not necessitate the supposition that he was still alive. For, in Lev. xviii. 8, 14, the nakedness of the wife is designated the nakedness of the husband, even after the husband is supposed to be dead, and he suffers an injury in the person of his surviving wife. A disgrace is brought upon his name by any dishonour to which she submits.

"All these considerations place it beyond reach of doubt that the father was dead. The fault of the son was that he had taken his deceased father's wife; and here, consequently, we have a case where the Apostle condemns connection with a widow on the ground of affinity. The

decision, too, which he pronounces, coincides exactly with the law as laid down in Lev. xviii. 8, and he declares, in explicit terms, that the fault was one which ought to be visited with exclusion from the membership of the church (1 Cor. v. 2). Nay, more, his decision implies not only that the connection was a sinful one, but also that the Christians of Corinth ought at once to have known it to be sinful, without needing to be told this by him. Such a connection was considered odious even among the Gentiles, who had nothing but natural reason to guide them. And it is implied that Christians ought to have seen its evils more clearly and promptly. But why so? The probability is that the Apostle here has the prohibitions of Moses in his view, as what should have guided the Corinthians. To what else can we so naturally suppose him to refer? The Corinthians were acquainted with the Old Testament, and they ought to have known that certain connections were entirely forbidden of old, by the God whom they now professed to serve. And, in fact, the very connection which Paul here so strongly condemns is prohibited in Leviticus. Now, does the Apostle's strong censure of the Corinthians for not perceiving that the connection in question was a sinful one, favour the idea that the Mosaic prohibitions were all abrogated? The very opposite is the conclusion to which we are obliged to come. For if the restrictions laid down by Moses had ceased to be obligatory, and if, consequently, there was no written law at all under the Gospel, then on the first occurrence of a questionable marriage in the church of Corinth, we should have expected from the Apostle, not a stern censure of any party connected with the proceedings, but rather a calm and kindly communication to the effect that, although there was no written law under the Gospel, still certain marriages were to be shunned as wicked and incestuous. The language of stern reprobation employed at the very outset by the Apostle, and the kind of comparison which he makes between Christian converts and Gentiles who had no revelation, are best accounted for by the supposition that

he considered the prohibitions of Moses as moral in their nature, and that the Corinthians ought to have known with certainty from the Old Testament what was the path of duty in regard to the parties mentioned.

"But, even though it were conceded that the Mosaic prohibitions in reference to marriage were not now of any force in the church, still the case at present under consideration would be fraught with most important lessons. It would obviously imply that certain connections are to be considered sinful by the law of nature, although not specified in Christ's law. It would be plain, too, that consanguinity between persons was not necessary to constitute their marriage an incestuous one; affinity would equally involve this result. Step-mother and step-son are not consanguineously related at all. It would also follow from the case before us that, although Scripture were utterly silent on the subject of forbidden degrees, still the church was bound to exclude from her membership those who contracted any marriage which she judged to be wrong. By the hypothesis there was no written divine law in the church against marriage with a father's wife. Yet Paul severely condemns the Corinthians for not having at once excommunicated persons who had entered into this connection. It is undeniable, therefore, on this hypothesis, that the church is considered by Paul as bound to judge for herself what marriages, whether on the ground of consanguinity or of affinity, are improper; and that it is her duty to exclude from membership those who disregard the regulations which she thinks proper to lay down. The point is as clear as daylight. The Corinthians had no written divine law on the subject of degrees. Let it be determined, then, on what ground they were blameworthy for having retained in communion the parties mentioned by Paul. It is vain to say they have Paul's direction how to proceed in the passage before us. Why, the very thing for which they are blamed is that they had not, of their own accord, proceeded in the case before Paul wrote to them at all. Either, then, they had the prohibitions in Leviticus for their rule, or they were

bound, in the exercise of a sound Christian discretion, to make regulations for themselves, and to exclude from the fellowship of the church all who disregarded these ecclesiastical rules. And in the present day, also, we must act either upon the one or upon the other of these principles.

"The great importance of the case in the first epistle to the Corinthians has not always been recognised. Not a few imagine that at most it can only serve as a precedent with regard to the single case of step-mother and step-son, and it has accordingly been said, that if the Levitical prohibitions are set aside, then there is only one connection which can be regarded as forbidden under the gospel. But this is a grievous mistake. Why does the Apostle mention the case of connection between step-mother and step-son at all? Plainly because such a case had recently occurred at Corinth. But it would be absurd to imagine that because he speaks of no other connection, therefore this is the only one that can be wrong. Is there, indeed, but one possible case of incest, and that, too, a case where there is no blood-relationship between the parties? But if there are others, then how are they to be ascertained? Undoubtedly in the same way in which this one ought to have been discovered by the Corinthian church before the Apostle wrote to them. Either we must adopt the prohibitions in Leviticus as our rule, or we must form regulations according to the best of our own judgment, and govern the church in accordance with them. It is incumbent upon those who object to these alternatives to point out what other possible course is left. There are but the two ways of proceeding. Either the Levitical prohibitions must be allowed to settle the boundaries of incest, or if they are set aside as no longer possessing authority, then the church must settle for herself, according to her own discretion, what connections are wrong, and she must exclude men from her membership for violating her ecclesiastical regulations, or synodical decrees, if it be preferred to call them so. There is but one other possible course, and that is that no man should be blamed for any connection into

which he may choose to enter, no matter what it be; but this idea cannot be seriously entertained without pouring contempt upon the authority of the Apostle Paul, who would thus be shown to have most unjustly blamed the Corinthians."

The argument here as to the universality and perpetuity of the Mosaic Code of Incest seems irresistible. Indeed, as I have already remarked, the Christian world has no other, and can have none except such as they may found upon it. It has been accepted as Divine, and the only differences of opinion that exist with regard to it arise out of different interpretations of it, or rather out of the efforts of some parties to add to or subtract from it.

I now give the testimony of early Christian Councils and Canons as to the law, soliciting particular attention to the declarations and decisions as to marriage with a deceased brother's wife or widow.

I quote from the learned work of Professor Gibson:—

"Basil lived in the beginning of the fourth century. In his 23rd Canon, addressed to Amphilochius, he says, 'Concerning those who marry two sisters, or those who marry two brothers, a letter has been sent forth, a copy of which we have sent to thy piety. But he who hath married the wife of his brother shall not be admitted to the communion till he shall have separated from her.' By the way, it may be remembered here, that they had not in those times fallen upon the ingenious distinction of the modern writers in this controversy, that when they spoke of wife they did not mean widow. The letter referred to was originally written to one Diodorus, of whom little is known, except that Balsamon says he was bishop of Tarsus. Diodorus had been asked by a man if he could marry the sister of his deceased wife, and he assured the man that it was not forbidden. Basil speaks of this man with amazement, as one who was not horrified at putting the question. He treats the letter shown to him as that of Diodorus as a forgery, and says he would have sent it to him for refutation, but that after it was shown him it was carried away.

But, lest injury should be done by that spurious statement, he thinks it necessary that it should receive their double condemnation. He then enters fully on the subject. The man had pleaded Leviticus xviii. 18—exactly as the advocates for such marriages do now. Basil replies, that if it only meant to exclude the marriage of two sisters who are both alive, because of contention, that where there is no contention, and would be none, it would then be lawful. He has recourse to the general principles in the chapter that, in his view, prohibit such marriages; which, he says, were prohibited by such custom as had the force of law, delivered down to them by holy men. He holds that the husband and wife were so much one, that the sister passed over into a kind of consanguinity—something like the principle of the ancient Karaites. He pronounces that such unions were no marriage; and the parties must be excluded from the communion of the church till they are separated. Basil concludes his letter thus—'Space forbids that I should say more, desirous as I am; but I pray that this, our dissuasive, may turn out stronger than the passions of that person, that this crime may not only be stayed in our region, but in whatever places it may have dared to enter.'* This language plainly intimates that it was held to be a daring and presumptuous crime, and so rare as to be almost unknown.

"The Council of Eliberis, held in 305, annexed (Canon lxi.) the same penalty to marriages of this kind as to an aggravated case of repeated fornication, or of once falling into adultery—excluding from communion for five years; a penalty more severe than for what is known among us as ante-nuptial fornication. The penalties prescribed by the Canons of Basil were the same as for less aggravated cases of adultery. Canon lxxvii., with other things, excludes for seven years. Canon lxxviii. says—'Let the same form be observed in those also who marry two sisters, although at different times.' The lxxix. Canon enjoins the same penal-

* See "Canones. SS. Apost., Council Gen. Sanct. Patr. Epist. Canonicæ, etc. Paris 1620." Pp. 241, 1017.

ties in the case of a step-mother as in that of a sister—all expressive of abhorrence of crimes of incest by affinity as well as by consanguinity.

"The second Canon of the Council of Neo-Cæsarea, A.D. 315, is as follows—'If a woman marry two brothers, let her be excommunicated till death. But at death, for humanity's sake, if she say that on being restored to health she will dissolve the marriage, she may be admitted to repentance. But if the woman die while such a marriage exists, or the man, admission to repentance to the survivor is difficult.'

"Let it be observed, in regard to these Canons, that they proceed on custom recognised as law. An attempt has been made to turn their force aside, by affirming that the marriages in question were not so much crimes *prohibited*, as *errors* to which penance was assigned. But Dr Pusey, in his published evidence, has very properly remarked—'The whole objection is founded on a false view of these Canons. They are not employed in laying down *what* is sin, but in annexing penalties to what was *acknowledged* to be sin. The Councils of Eliberis or Neo-Cæsarea, or the Canons of St Basil, did not first make these incests to be such. This, St Basil says, they received from their fathers. But when some persons ventured upon them, punishment was annexed to them, as well as to other notorious sins. Had the Canons been a simple prohibition of the sin, we should have been told that these marriages were now for the first time prohibited. Now that it is assumed in the Canon that it is a sin, and the punishment only is annexed to it, we are told that it is not so much mentioned among things prohibited as among those errors for which penance is assigned. By the same rule, neither would murder, adultery, perjury, nor any other sin. The Church has only spiritual punishments. But would it be thought no severity now, if a person were enjoined to place himself for six years among public penitents, with fornicators and adulterers, and only at the close admitted to the communion?' In fact, they seem to have dealt with these crimes of incest on the same principle as that on which they dealt with what the advocates for these marriages seem

now to account a very light thing indeed—viz., polygamy. Canon marked xc., in the letter to Amphilochius, though following lxxix., says, that the fathers passed it by in silence as 'incident to wild beasts and alien to human beings,' showing at least very clearly that, wherever it existed, or by whomsoever practised, it was a frightful excrescence on humanity.

"The testimony of Augustine is very important as to the *principle* upon which the early church proceeded in their prohibitions. 'In a work, supposed to have been written about A.D. 419, and so containing his maturest judgment, St Augustine speaks of the prohibitions in Lev. xviii. as *things without all doubt to be kept under the New Testament.*' He raises the question why the particular command (Lev. xviii. 19) is repeated there, whereas the act forbidden had always been sufficiently prohibited before; and he says, 'Is it, perhaps, lest what was already said above should be thought to be understood figuratively, that it is set down here also (chap. xviii.—the chapter containing the prohibited degrees), *where things of that sort are forbidden, as in the time of the New Testament also,* when the observation of the ancient shadows is done, *are certainly to be observed?*'—(Quæst. in Lev., qu. 64.) And in a work later (A.D. 427), consisting of extracts from Holy Scripture for popular use, as to 'those things which, whether as commanded, or forbidden, or allowed, are so laid down in Holy Scripture, that *now also—i.e.,* the *time of the New Testament*—they belong to the leading of a holy life, and to morals.'

"The author does not deem it necessary for his present purpose to prosecute this particular point of the opinions of the early Church any further. Those who wish to follow it out will find the subject most learnedly and ably discussed, in all its bearings, in the evidence of Dr Pusey before her Majesty's Commission of Inquiry. It is given, with much more that is truly valuable on the subject, in his work entitled, 'Marriage with a Deceased Wife's Sister Prohibited by Holy Scripture, as understood by the Church for 1500 years,' etc.—Oxford 1849. He follows the subject

out, in all its bearings, during the whole history of the Catholic Church.

"The following is the general principle of the Canon Law:—In the 'Corpus Juris Canonici,' affinity is defined to be, 'The proximity of persons proceeding from "*coitu*" wanting any blood-relationship. This according to the Canons; but according to the Laws it is proximity proceeding from marriage; and it is required, according to the Laws, that the marriages be lawful and not forbidden, that affinity may be contracted.' The Canons hold that it may be contracted by connections that are unlawful, whether by marriage on not. The Canon Law holds that 'sister and brother are in the first degree of consanguinity, and the brother and husband of the sister are in the first degree of affinity.' While, from the cases of the descendants of our first parents and of Noah, the Canon Law does not hold such relations to be forbidden by Divine, abstract, natural right, yet it holds that they were prohibited by Divine positive right; and at length positive Canon Law extended the prohibition 'even to the seventh degree.'" *

I have nothing to do with the claims of Romish Councils to set aside human and divine laws, in order to the absolution of lewd monarchs or the conciliation of popular though false views; I am bound to state as facts, however, that the Romish, the Greek, and the various branches of the Eastern Churches have accepted the Mosaic Code, prohibiting in connection with it marriage with a deceased wife's sister, and that they have condemned, as Moses himself condemned, the heinous enormity of marriage with a deceased brother's wife or widow.

The Waldensians, having ever been a distinct and separate church, and having never submitted to the doctrines or Canons of the Church of Rome, must be regarded as an excellent authority.

In a letter from the Rev. Dr Revel, Moderator of the Waldensian church, he says:—

"As to the *principles* maintained by our church respect-

* See "Corpus Juris Canonici. Lipsiæ, 1839." Pars. ii., cc. 1238-39.

ing marriages between brothers and sisters-in-law, they are those which we find in the Holy Scriptures on marriages between relations. Our Ecclesiastical Discipline, reviewed in 1839, says :—'*Marriages between brothers-in-law and sisters-in-law, uncles and nieces, aunts and nephews, and between relations at one degree more near, are forbidden.*' I find this same prohibition in the Acts of the Synods of 1833, 1828, 1801, and 1798. Our civil law does not permit alliances between a brother-in-law and sister-in-law,—that is to say, between a widower and the sister of the deceased wife, *no more than between a widow and the brother of the dead husband.* It has sometimes happened that the king, by a *special decree*, has authorised such a union, and pastors have, *contrary to our discipline*, blessed it" (as unfaithful men have done in a country where the civil law favours them). "Nevertheless, since the constitution, the king's ministers reject on principle demands of this nature. It seems, in certain given cases, that it might be *convenient* and very desirable that the sister of the deceased mother who has left *many* little children, might come to charge herself with the care of bringing them up—nevertheless, I doubt that in practice the effects would be as good as some imagine them. These unions appear prohibited by Leviticus xviii. 18, xx. 21, and in point of public and social morality, persons most competent to judge see in them very grave inconveniences, so that *we are very glad* that the civil code does not admit of them.

(Signed) "J. P. REVEL, *Moderator.*"

I may state that the French Reformed Church hold precisely similar doctrines and views. The 9th Canon of the 13th chapter of their book of discipline—a work adopted in 1559, and revised by twenty-three succeeding Synods—has the following :—

"It is not lawful for any man to marry the sister of his deceased wife; for such marriages are prohibited, not only by the laws of the land, but by the Word of God. And although by the law of *Moses* it was ordained that, when the brother died without children, his brother should raise

up seed unto him, yet that law, enacted for the children of Israel, was temporary, relating only to the preservation of the tribes of that people. But the marriage of the sister of a betrothed and deceased wife is of another nature, because that alliance was not contracted by a commixture of blood; therefore such a marriage may be admitted and approved. Yet, notwithstanding, all possible care shall be taken that neither the civil magistrate nor weak Christians be offended."

The same principle was affirmed at the Synods of Poictiers the following year, and of Lyons, of which Beza was a member, in 1563. These Synods had intimate intercourse with Calvin, who met at Geneva with the Brethren "come from the Synod of Lyons." In chap. x. of the Synod of Vertueil, I find the following heading:—"Orders and *Decrees concerning Marriage*, made by the authority of the National Synod of Vertueil, held in the year 1567, but drawn up at the desire of the fathers in this Synod by the R. Mr Calvin, minister of God's Holy Word, pastor and professor in the Church and University of Geneva." Under the ninth decree, it is queried, "What are those cases of affinity which hinder marriage? Answer V.—*Let no man marry his brother's widow, nor any woman him who was her sister's husband.*" Calvin and Beza were at the framing of these canons.

The Lutheran divines of Germany, in reply to the inquiry made by Henry VIII., said—"It is manifest, and cannot be denied, that the law of Lev. xviii. prohibits a marriage with a sister-in-law. This is to be considered as a DIVINE, a NATURAL, and a MORAL law, against which no other law may be enacted or established. Agreeably to this, the *whole Church has always retained this law*, and *judged such marriages* INCESTUOUS. Agreeably to this, also, the decrees of Synods, the celebrated opinions of the most holy fathers, and even civil laws, prohibit such marriages, and pronounce them *incestuous*. Wherefore we also judge that this law is to be preserved in all the churches as a DIVINE, a NATURAL, and a MORAL LAW; nor will we dispense with, nor permit in our

churches, that such marriages shall be contracted; and this doctrine we can, and as God shall enable us, we will resolutely defend." *

On the opinion of the Dutch Reformed Church, I quote the following passages from the valuable little work of Dr Janeway, of America, from which the preceding reply to Henry is extracted:—

"The General Synod of the Reformed Dutch Church, at their last session, having received the reports of their classes, departed from what had heretofore been the uniform practice of their church, and the Church of Holland, from which they were descended, by resolving, 'that all resolutions which may have been passed by the General Synod, forbidding a man to marry his deceased wife's sister, be and hereby are rescinded.'—(See their minutes for 1843, p. 221.)

"In the year 1816, the Venerable Dr John H. Livingston, Professor of Theology in the seminary of that church, prepared and published a dissertation on this question, at the request of the General Synod. It is able and learned.

"As early as 1580, Holland, the doctor shows, declared in an ordinance, 'That no persons related in blood, or by affinity, within the forbidden degrees, shall be permitted to cohabit or be married, under a penalty of being declared infamous, and subjected to corporal punishment and heavy fines, and if they persisted in their crime, to banishment.' In another ordinance, the forbidden degrees are enumerated; and it is declared, 'That NO MAN MAY MARRY THE WIDOW OF HIS DECEASED BROTHER, nor may any WOMAN MARRY THE HUSBAND OF HER DECEASED SISTER.'

"And to prove what construction is put on Lev. xviii. 16, by the Reformed Dutch Church, the doctor quotes from the marginal notes of the translators, appointed by the *National Synod* of Dortrecht, held in 1618 and 1619, the following words:—'From this law it necessarily follows, that a woman who has been married with one brother, may

* Quoted from Dr Livingston's Dissertation, pp. 157, 158, by Janeway on "Unlawful Marriage," pp. 31, 32.

not, after his death, marry with another brother; and upon the same principle, a man who has been married to one sister, may not, after her death, marry the other sister. He quotes also their note on verse 18, which is as follows:—'It consequently can by no means from this be concluded, that the husband, *after the death* of his wife, may marry her sister.'—Pp. 162, 163. In the conclusion of his dissertation, this venerable and profoundly-learned professor, being the brightest ornament of his church, says, 'The REFORMED CHURCH IN HOLLAND has established by her canons, "that no man may marry his sister-in-law, and no woman may marry her brother-in-law," and has never deviated from his rule. The Reformed Dutch Church in America, which is the same with the Church in Holland, has adopted the same canons, corresponds with that church, and is bound by the most sacred obligations to transmit unimpaired to posterity the precious treasure with which she is entrusted.. There can, THEREFORE, be no cause for suspense, no motive for hesitation; but, on the contrary, every consideration suggested by faithfulness to God, and attachment to His Church, renders it an imperious duty to avoid even the appearance of SCHISM, and strictly to *abide* by the *established canons*.'"

Dr Janeway then gives a decision of the particular Synod of this church in 1788, declaring such marriages to be contrary to the Word of God—of the General Synod in 1797, affirming this judgment—of the General Synod in 1815 delaying the decision of a case; and the following year, on the vote being taken for altering the previous resolution, it was *fifteen* yeas, and *forty-one* nays. "Whereupon it was resolved, *nemine contradicente*, That it is inexpedient to make any alteration or modification of the decision of the church on the subject of a man's marrying his deceased wife's sister." In 1842, the resolution already quoted was adopted. All this is proof of what was the universal doctrine of the Dutch Church till very recently, when the American portion had fallen away from the faith of their fathers.

The opinion of the English Reformers accorded with that of the Continental. Mr Badeley quotes the following letter of Bishop Jewell, which is found in the Appendix to Strype's Life of Archbishop Parker, vol. iii. of Oxford ed., p. 55 :—" Yet will you say, although this manner of reason be weak, and the words make little for you, thus far the reason is good enough, for these words make not against you; which thing, notwithstanding I might grant, yet will not this reason follow of the other side;—there are no express words in the Levitical law whereby I am forbidden to marry my wife's sister; *ergo*, by the Levitical law such marriage is to be accounted lawful. For notwithstanding the statutes in that case make relation unto the eighteenth chapter of Leviticus, as unto a place wherein the degrees of consanguinity and affinity are touched most at large, yet you must remember that certain degrees are there left out untouched, within which, nevertheless, it was never thought lawful for a man to marry. For example, there is nothing provided there by express word, but that a man may marry his grandmother, or his grandfather's second wife, or the wife of his uncle by the mother's side. No; nor is there any express prohibition in all this chapter but that a man may marry his own daughter. Yet will no man say, that any of these degrees may join together in lawful marriage; wherefore we must needs think that God in that chapter has especially and namely forbidden certain degrees, not as leaving all marriages lawful which he had not there expressly forbidden; but that thereby, as by infallible precepts, we might be able to rule the rest; as when God saith, no man shall marry his mother, we understand that under the name mother is contained both the grandmother, and the grandfather's wife, and that such marriage is forbidden. And when God commands that no man shall marry the wife of his uncle by his father's side, we doubt not but that in the same is included the wife of the uncle by the mother's side. *Thus you see God himself would have us expound one degree by another.*"

Coming down the stream of time to the reign of Henry

VIII., who had got a dispensation from the Pope to marry his brother's widow, and then, professing himself grieved in heart and conscience at his iniquity, applied for a separation, we have the testimony of Hume the historian as to the customs and usages of the Christendom of that time. Hume, in his customary sneering infidelity, declares his belief that, had the question of Henry's marriage with Catherine been examined by "the principles of sound philosophy, exempt from superstition," it would not have been liable to much difficulty. He goes on, however, after giving certain reasons in accordance with what he calls "sound philosophy," to say:—

"In opposition to these reasons, and many more which might be collected, *Henry had custom and precedent on his side;* the principles by which men are almost wholly governed in their actions and opinions. The marrying of a brother's widow *was so unusual, that no other instance of it could be found in any history or record of any Christian nation;* and, though the Popes were accustomed to dispense with more essential precepts of morality, and even permitted marriages within other prohibited degrees, such as those of uncle and niece, the imaginations of men were not yet reconciled to this particular exercise of his authority. Several universities of Europe, *therefore, without hesitation, as well as without interest or reward,* gave verdict in the King's favour; not only those of France—Paris, Orleans, Bourges, Toulouse, Angiers—which may be supposed to lie under the influence of their prince, ally to Henry, but also those of Italy—Venice, Ferrara, Padua, even Bologna itself, though under the immediate jurisdiction of Clement. Oxford alone, and Cambridge, made some difficulty; because these universities, alarmed at the progress of Lutheranism, and dreading a defection from the Holy See, scrupled to give their sanction to measures whose consequences, they feared, would prove fatal to the ancient religion. Their opinion, however, comformable to that of the other universities of Europe, was at last obtained."

The nearer we approach our own age the testimony is

all the clearer and all the more emphatic. Thus, the Church of England gives no uncertain sound on the subject, as its 99th Canon, passed in 1603, abundantly testifies:— "No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority, in the years of our Lord God, 1563. And all marriages so made and contracted shall be judged incestuous and unlawful, and consequently shall be dissolved as void from the beginning; the parties so married shall, by course of time, be separated, and the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish." The table referred to is that known as Parker's Table, which contains these—"Wife's Sister, Husband's Brother; BROTHER'S Wife, Sister's Husband."

The table within the degrees of which no person is allowed to marry, I have already given in an earlier page.

The Scottish Church also, in all its various branches, is not less explicit. The *Confession of Faith*, which is its recognised standard, and which was drawn up and ratified by Act of Parliament in 1645, is very explicit. It says in its 24th chapter, sections I. and IV.:—

"I. Marriage is to be between one man and one woman; neither is it lawful for any man to have more than one wife, nor for any woman to have more than one husband, at the same time."

"IV. Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the Word; nor can such incestuous marriages ever be made lawful by any law of man, or consent of parties, so as those persons may live together as man and wife. The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own."

This I have said is very clear and very explicit: nothing can be more so. "The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of

her own." The proof of this given is the whole of the 18th chapter of Leviticus, and the 19th to the 21st verses of the 20th chapter of Leviticus.

The American churches, whose constitutions are generally based on the constitutions of the parent churches in Europe, have held similar views and given similar decisions; and we have the undoubted *testimony of the whole Christian Church, of every shade and degree, whether of purity or of corruption*, for 1500 years, holding the marriage of a man with the sister of a deceased wife to be unlawful and incestuous. In regard to the first 300 years of the Christian Church, if there be not positive testimony that it held the same thing—as there is strong and almost unquestionable presumption that it *did*—there is assuredly not a *vestige* of evidence that it held the contrary.

## CHAPTER V.

### Civil Law as Respects the Mosaic Code.

In accordance with the opinions and decisions of the Councils and Churches, have been the opinions and decisions of nearly all Civil Governments from the earliest records of history. I shall now give, in the most summary form, the chief laws and usages bearing on the subject. In reference to human legislation in the matter of incest, in the time of the Roman Emperors, Professor Gibson says :—

"It is remarkable that almost as soon as it was possible to have human legislation in harmony with that of the Christian Church you have such marriages forbidden. This is pretty clear proof of what was the prevailing opinion of Christians at that time. You have these prohibitive laws in the Codex Theodosianus. It may be useful, for the sake of the unlearned reader, to say that this was a collection by the Emperor Theodosius of all the laws of the Christian Emperors. The edition before us is that of Lyons, 1665, in four folio volumes, with the commentaries of James Godfrey, whom the title calls 'a man of senatorian rank, and an illustrious jurist of this age.' In III. Cod. Tit. xii., there is first a law forbidding marriage with a niece, the daughter either of a brother or sister, as an abomination, and making its violation a capital crime. It is addressed to the governors of Phœnicia and the adjacent countries. It bears date 339. The law on this point among the Romans varied. Godfrey tells us that by very ancient law *(antiquissimo jure)*, the marriage of the daughter both of a brother and sister was forbidden; but that afterwards a distinction was made between the brother's and the sister's daughter—that it was allowed to the former to marry her uncle by the father's side, but not her uncle by the mother's

—that Claudius, desirous of marrying Aggripina, his niece, procured an alteration of the law in his favour. In this he had great difficulty, and it required much management, and the aid of some subservient statesmen and imperial gold, to bring it about. The narrative is given by Tacitus (See 'Annal.,' lib. xii.). Godfrey refers also to Suetonius, in his 'Life of Claudius,' chap. 26; Seneca, in his 'Octavia,' act i.; and the old scholiast, Juvenal. The words of Tacitus are remarkable—that even after all had been prepared, and the marriage agreed on, 'they dared not to celebrate the rites of marriage, there being no example of the daughter of a brother led to the house of her uncle. And, moreover, if the *incest* were despised, they were afraid it might turn out to the public damage.' The sequel proved that their fears were well founded. The whole scene, as narrated by Tacitus, is a curious display of the time-serving profligacy of the senatorial agents, and the base subserviency of an immoral rabble. There was a Vitellius to talk over the one and to corrupt the other. Parallels are not wanting in the present day.

"Those who desire to see more on the Roman law may consult the Institutes of Justinian, 'De Nuptiis. x. Titulus, *Qui possunt nuptias Contrahere*,' in which they will find the doctrine of affinity maintained among heathen Romans, as it has been among the Jews and Christians, Roman Catholics and Protestants. The example of Claudius was followed by Domitian. In a short time after, the ancient law was restored. Various changes occurred, as might be supposed, when the law stood in the way of the lusts of the Roman Emperors. There is no law extant by Constantine the Great. The ancient law was restored by his son, who attached capital punishment to its incestuous violation. The law of heathen Rome, then, was certainly more stringent than that of some modern legislators, who seem, in this respect, to have outstripped in license not only the law of Moses, but even of heathen Rome.

"There is next 'the law of Constantius concerning the unlawful marriage with the wife of a brother and the sister

of a wife. The law was passed about the year 355. It is as follows:—'Although the ancients believed that it was allowable, the marriage of a brother being dissolved, that his brother should marry his wife *(uxorem)*; and that it was also lawful, after the decease of a woman *(mulieris)*, to contract marriage with the sister of the same, let all *(universi)* abstain from marriages of this sort, nor suppose that the children procreated of such unions can be legitimate; for it is proper that those who may be thus born be spurious.'

"Godfrey, in his notes, understands by the word 'ancients,' Jews—referring to the permission of the leviral law, in Deut. xxv. 5, and Ruth iv. 4, and to the Egyptians, as well as ancient Romans. Godfrey has the following commentary:—'The same woman is forbidden to marry two brothers in succession, and the same man two sisters; or (which is the same thing), a brother to marry the wife of his brother, and the same to marry the sister of his wife, by the Emperor Constantius, by his law, A.D. 355, equally as by the law of Theod. the Great, Fratris 5 cod. eod. tit. De Incestis Nuptiis; by Arcadius, l. 3, h. 1; by Theodosius the Younger, l. ult. h. t.; by Zeno, l. pen. cod. eod.; and by Anastasius, l. ult. cod. eod.; and thus there are extant altogether six constitutions concerning the matter and its prohibitions.' He then gives a profusion of facts, and illustrations, and proofs, and refers to the Christian Canons already quoted.

"We have next the laws of Arcadius and Honorius declaring the penalties of incestuous marriages, with an enumeration of the degrees embraced, and among others the marriage of a man with the sister of his wife. It bears date 396. And further, under the same title xii., we have the law of Theodosius the Younger, bearing date 415, declaring the children illegitimate, and excluding them from succession to the father's inheritance. These kinds of marriages, it appears by the Cod. Justinianus, were forbidden by Valentinian, in the year 388. It is remarkable (and remarkable only because parties have rested much on

the circumstances that the Levitical law does not use the word 'widow' in prohibiting a man from marrying his brother's wife), that in all these canons, and laws, and comments, the phrase 'brother's *widow*' is never once used in relation to the wife of the husband, whether dead or alive; but *always*, without an exception, the phrase is brother's *wife*—'*uxor*,' '*uxorem*'—a fact which stamps absurdity on the ingenious shifts of some modern critics on the subject. This, says Bush, 'was the common usage of the Hebrews, Greeks, and Romans, and such is that of the French, Germans, the Spanish, and the Italians, as well as English. In none of the versions of the Scriptures, in these languages, is the word widow used in such cases."

After this historical proof, one may well be surprised at the ignorant asseverations, so industriously circulated by writers on the other side, that the prohibitions of such marriages owe their origin to the Pope of Rome and to Henry VIII. of England, though not at the unscrupulous use made of them by parties involved in difficulties by their own contempt, if not of the laws of God, certainly of the laws of their country.

It is unnecessary to attempt to trace human legislation down through the period of the dark ages till the time of the Reformation. Of course it was based, throughout Europe, on the Canon Law; and was, and is still, therefore, the law in Popish countries. The weight that is due to this fact must be otherwise determined.

I have already indicated in general terms the views of Christian, or so called Christian, States, to the same effect—Prussia and the United States being exceptional. In the former we can count no fewer than 7800 divorces in three years, or about 2600 a year, a state of things arising from lax notions and lax discipline on the subject of marriage which no one would care to import into this country; and in the latter we do not need to be informed how pernicious have been the results of marriages celebrated in spite of the most solemn injunctions and prohibitions of the Lawgiver of the Jews.

On the law of England as to the prohibited degrees, no higher authority can be given than that of Blackstone. The learned commentator thus declares himself:—

"By marriage, the husband and wife are one person in law. Upon this principle of an union of person in husband and wife, depend almost all the legal rights, duties, and disabilities that either of them acquire by marriage. The same degrees by affinity are prohibited. As a husband is related by affinity to all the consanguinei of his wife, and, *vice versa*, the wife to all the husband's consanguinei; for the husband and wife being considered one flesh, those who are related to the one by blood, are related to the other by affinity; therefore a man after his wife's death cannot marry her sister, aunt, or niece."

I now quote the eminent authority of Edward Badeley, Esq., given in his celebrated speech on the law of England, in the case of Brook *v.* Afmitage. In that speech he reviews from the earliest periods the decisions of the ecclesiastical courts and law lords on the Mosaic Code, and then says:—

"It seems, my Lords, from all these authorities (authorities of undoubted weight), that supposing the question was at all doubtful upon the statute of 32 Henry VIII., and upon the rule of the canon law, as left untouched by that statute, the decisions of the ecclesiastical courts from that period downwards are the best evidence, and the most conclusive evidence, of the law upon the subject. Then, my Lords, I would ask, how have these courts decided? The answer is, uniformly in one way. The cases which were cited to your Lordships in the former argument were some of them cases distinctly upon this very point—as to the validity of a marriage with a wife's sister. One of them, that of Hill *v.* Good, was brought under the notice and subjected to the most careful investigation of the courts of common law, and those decisions have been acted upon from that period to the present. I shall not refer to the cases which have been already cited to your Lordships, further than just to give the names of those in which marriage with a wife's sister has been expressly declared to be incestuous and

prohibited. You had first the case of Hill *v.* Good, reported in *Vaughan*, p. 302; then you had Harris *v.* Hicks, in 2 *Salkeld*, p. 548; Collet's case, in *Sir Thomas Jones*, p. 213; Butler *v.* Gastrill, in *Gilbert's Equity Cases*, p. 159; Brownsword *v.* Edwards (the decision of Lord Hardwicke), in 2 *Vesey, Sen.* p. 248; Falmouth *v.* Watson, in 1 *Phillimore*, p. 355; Chick *v.* Ramsdale, 1*st Curtis*, p. 44—a very recent case; and lastly, Sherwood *v.* Ray, decided by the Privy Council, and reported in 1 *Moore*, p. 353, in which Baron Parke and the other judges held, that the canon law is the law by which marriages are governed in this country, except so far as they are restricted by the Marriage Act, and that a marriage with a wife's sister is incestuous according to the Divine law; and towards the conclusion of his judgment, Baron Parke says, that 'the marriage of a wife's sister is illegal by the Divine and the human law.' Thus, my Lords, the law appears in regular chronological order from the earliest period of the Church and of this country to the present; you have had the law of the State and the law of the Church, both going uniformly in one direction—down to the period of Henry VIII., the canon law adopted generally; at the time of Henry VIII., and subsequently, only a portion of the canon law struck off, the rest being left untouched, and the decisions of the courts uniformly adopting the same rule, and uniformly holding these marriages to be incestuous. I would ask your Lordships, therefore, whether any case can be stronger than this, to show what the law really is, and whether, when the statute of William IV. speaks of marriages 'within the prohibited degrees of consanguinity and affinity,' and refers to the practice of the ecclesiastical courts, the legislature could have had in view any other prohibitions than those which had been so acted upon, and universally adopted by, the ecclesiastical courts of this country, as the prohibitions contained in Leviticus, and enjoined by the statute of Henry VIII.? I would call your Lordships' attention to the words of the statute in reference to this point:—'Whereas, marriages between persons within the prohibited degrees

are voidable only by sentence of the ecclesiastical court, pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of affinity should remain unsettled during so long a period; and it is fitting that all marriages which may hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be *ipso facto* void, and not merely voidable:—Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that all marriages which shall have been celebrated before the passing of this Act, between persons within the prohibited degrees of affinity, shall not hereafter be annulled for that cause by any sentence of the ecclesiastical court, unless pronounced in a suit which shall be pending at the time of the passing of this Act.' Upon these words, my Lords, I do submit with confidence to your Lordships, that nothing can be clearer than that the statute of William IV. must be taken to refer to the prohibited degrees as adopted and acted upon by the ecclesiastical courts; and that those, and those only, are within the meaning of the Act. Nothing can be clearer than that when a statute thus refers in its preamble, as well as in the body of it, to the ecclesiastical law in connection with the subject of marriage, it must be taken to mean those degrees which are prohibited by that law, and to adopt them as the rule which is intended to be enforced. My Lords, in *Bacon's Abridgment, title* '*Statute*,' it is said, 'It is in the general true that the preamble of a statute is a key to open the mind of the makers as to the mischiefs which are intended to be remedied by the statute.' Then, my Lords, if we see that the rule of the Church, from the earliest period, was the ecclesiastical law of this country down to the period of the Reformation, and that from the Reformation down to the Canon of 1603 no alteration at all was made with respect to cases which were within the Levitical degrees,

then it follows that the Canon of 1603, in the regulations which it made, and in the persons whom it included within those degrees, merely adopted the ancient law of the land; and if so, I have established my point, that the case of Middleton *v.* Croft becomes a direct authority in my favour; for without troubling ourselves with Lord Hardwicke's questionable doctrine about the operation of canons generally, we have his judgment about the very point before him, precisely tallying with the present case, and declaring that such a canon as I have proved this of 1603 to be is binding upon the laity as well as upon the clergy, and may be enforced as the law of the land; and as it is clear, from repeated cases, that this canon has been acted upon ever since it was made, without any doubt of its validity, its reception becomes evidence on Lord Hardwicke's principle of its being in affirmance of the ancient law. Then, my Lords, if that is so, I am at a loss to find what there is upon the other side. What authority has been cited? None at all of any value; none which can be used on any pretence against us. Parson's case and Mann's case, the only two referred to, I think, on the other side by Mr Foster, so far from being for him, were proved to be directly against him; for the decision in both these cases was, that a prohibition to the ecclesiastical courts should not be granted. So far, therefore, from the authorities being, as he stated them to be in part of his argument, in his favour, they are all universally, with one consent, against him. I cannot find a single authority for determining that these marriages are valid. I cannot find a single instance in which any doubt has been entertained by the courts of this country upon this subject since the decision of the court in Hill *v.* Good. This very question then was disputed, argued, and considered at very great length, and with very great care; and the result of that decision was, that marriage with a wife's sister was invalid. The ecclesiastical courts were left to enforce their rules upon that subject; and that case has been uniformly acted upon since, and must be law at the present day. Then, my Lords, what have they produced on the other

side? They have merely cited to your Lordships the statute of Queen Mary; but that statute of Queen Mary, as I submitted to your Lordships most confidently the other day, cannot interfere with this question, being merely a private Act, relating to that particular marriage, the statute being most guarded in its terms, and never having been, so far as I can discover, used in any single instance to affirm any marriage similar to the one there referred to, much less a marriage with a deceased wife's sister. It has never been used for that purpose, or if it had been, it would, as I argued, have proved too much, inasmuch as it would sanction generally marriage with a brother's wife, which undoubtedly is prohibited in express terms by Leviticus. So that there is nothing in the cases or in the statute cited by my opponents, to impugn in the slighest degree these decisions, or to interfere with the law as I have ventured to lay it down before your Lordships. Then, my Lords, what is the effect of the statute of William IV.? Simply to affirm the judgment of the ecclesiastical courts. It make no difference in that respect; and although objections have been made to the statute, as if it really inflicted a hardship, I apprehend it is not open to that objection. The statute did not interfere with the principle of the law at all; and when it stated that such marriages should in future be "void and not merely voidable," it merely made a distinction without a difference; "voidable," in cases of marriage, always meant "void," for void they were according to the ecclesiastical law; and they were only said to be *voidable* because the courts of common law then had no jurisdiction upon the subject. The determination of the validity or invalidity of a marriage was left entirely to the ecclesiastical courts. It was ecclesiastical law and ecclesiastical courts which regulated those matters; and provided a marriage came before the courts having the stamp of the Church, and the authority of the Church in its favour, the courts of common law received it, and left it to the ecclesiastical courts entirely to set it aside if invalid. But when it was set aside—when the ecclesiastical courts did

interfere, then the marriage became void, and void *ab initio*. It was null and void to all intents and purposes; and in proof of that I would refer your Lordships again to a portion of my Lord Lyndhurst's judgment in the case of the Queen *v.* Millis, in illustration of that particular point, for he says (mentioning some authorities which had been furnished to him): "It (the libel in the case which he was citing) prays that the marriage may be pronounced to have been and to be, '*fuisse et esse*,' null and void, etc.; the evidence is set forth, and is followed by the sentence, which dissolves the marriage *de facto* with Alicia, and pronounces it *fuisse et esse invalidum*." And his Lordship afterwards says: "It further appears from the terms of the sentence, that the dissolved marriage was pronounced to have been and to be *(fuisse et esse)* void, agreeably to the rule of the ecclesiastical courts—that when a marriage voidable by reason of precontract is annulled, it is annulled *ab initio*."

He proceeds to discuss the points peculiar to the case before the Court—namely, that one of the parties was illegitimate—and concludes as follows:—

"My Lords, I believe I have (I fear at immoderate length) carried your Lordships through, not only the reasons on which I consider myself entitled to your Lordships' judgment, but also the authorities by which I think those reasons are supported. I have shown that the statute of William IV., whether it be looked at by the light of the statute law, or the ecclesiastical law, or the decisions of the courts of common law as explaining and affirming both, can be interpreted but in one way, and that that interpretation necessarily includes within the prohibited degrees the case of the marriage with the wife's sister. I have shown this with reference to the statute of 28 Henry VIII., cap. 7, which I submit is in force. I have shown it with respect to the 32nd Henry VIII., with reference to the term "Levitical degrees," and with reference to the chapter of Leviticus itself. I have shown the proper mode—the mode always adopted—of interpreting that chapter of Leviticus, and that the objections which have been made to this mode

of interpretation are of no force, that they have not been acted on, and that they are not recognised. I have shown that that statute of Henry VIII., and the decisions upon it, are not interfered with by the statute of Queen Mary, and that Queen Mary's statute cannot be allowed to have any weight. And lastly, my Lords, I have shown that the ecclesiastical law of this country, from the earliest period to the present, has gone in one uniform course; and that whether before the Reformation, at the time of the Reformation, or since, the decisions have been uniform regarding marriage with a wife's sister as incestuous. I have then shown, not only that the authorities are one way, and that they are all consistent, but that there is not a single authority, as far as I can discover, the other way; and not a single statute which really interferes with the construction for which I contend; and I have shown your Lordships that upon the Continent the rules of the Canon Law, the rules of the Civil Law, and the practice of other nations, concur and conspire with the decisions of the Courts of this country, and that the illegitimacy of one of the parties makes no difference. I would ask your Lordships, therefore, whether a case can be put before you more clear or more conclusive than this?"

The reader, I think, will agree with the learned gentleman that nothing could be more conclusive, and the Court evidently thought so, as they gave judgment in favour of his views in the following terms:—

"THE VICE CHANCELLOR:—The first question is, as to the construction and effect of the statute 5 and 6 Wm. IV., c. 54. Mr Justice Cresswell has given me his opinion that the statute binds all English subjects, wherever they may be. This opinion he supports by the universality of the words, taken in their common and ordinary sense. He has also supported it by the authority of the Judges in the case of the *Sussex Peerage*, in construing the Royal Marriage Act, and by a reference to the scope and object of this statute itself. The more closely the matter is examined the more clearly does it appear that this is the only true

construction of the Act. The purpose of the Legislature was to annul for the future all marriages between persons within the prohibited degrees. Therefore the words are, 'that all marriages which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatsoever.' These words, clear and unambiguous, prevent the relation of husband and wife from subsisting between any subjects of the realm of England within the prohibited degrees. Again, the law of England is wisely reluctant to admit any doctrine which is repugant to the settled principles and policy of its own institutions. It is a settled principle of the law of England not to recognise or give effect to any contract illegal or immoral, or against public policy. This principle, so well established, is binding upon all English subjects, and imperative in all English Courts of Justice. The question of illegality, immorality, or contravention of public policy in such cases is to be decided by the laws of England, and not by the laws of any foreign country. All the highest authorities among foreign jurists treat as an exception from the principle of comity and respect due to foreign laws, the case of such foreign laws as interfere with the power and public policy of each state in its own municipal system. The parties to this marriage contract were subjects of the Crown of England, bound by their allegiance and domicile to the law and constitution of England. In Denmark they continued still subjects to the Crown of England. In Denmark their *status* was that of aliens to the Crown of Denmark, and owing only a temporary obedience to the laws of Denmark under which they had only temporary protection. The law of England, which prohibits the marriage of a widower with the sister of his deceased wife, is an integral part of our law and public policy. Therefore, by the established principles of international law, it must have a paramount effect, and cannot be evaded by having resort to the laws of any foreign country. The law of England as to this matter is a personal law acting upon

the persons of English subjects, and creating a personal incapacity which must accompany the persons into every country. 'Quando lex in personam dirigitur respicienda est ad leges illius civitatis quæ personam habet subjectam.' These are the words of Hertius, and they state a principle recognised by the other jurists. As a question on the law of contract, the validity of the contract of marriage as to the capacity to contract, must depend on the law of the country in which the contract was to have its effect, and that country was England. This is a case in which three circumstances concur, any one of which, according to the jurists, excludes the application of the *lex loci contractûs*. It is a case in which the public policy of the law of England prohibits the contract. It is a case in which the law is personal in its nature, and must accompany the persons wherever they go. And it is moreover a case in which England was the country with a view to which, and in which, the marriage contract was to have its permanent effect. No resort to the laws of Denmark, or of any other foreign country, can give validity to such a contract where the law of England has made it null and void.

"IT SEEMS, THEREFORE, THE DUTY OF THIS COURT TO DECLARE THAT THE MARRIAGE BETWEEN THE TESTATOR AND EMILY ARMITAGE, THE SISTER OF HIS DECEASED WIFE, WAS NOT A VALID MARRIAGE, BUT IS NULL AND VOID TO ALL INTENTS AND PURPOSES WHATSOEVER, AND THAT THE REAL AND PERSONAL ESTATE OF CHARLES ARMITAGE BROOK, DECEASED, HAS BECOME VESTED IN THE CROWN."

I shall only add, on this point, a number of authorities quoted by the Rev. John Macrae of Hawick, in his work on "The Scripture Law of Marriage":—

"In Harris *v.* Hicks, it was decided that marriage with a wife's sister was incestuous. In Ayliffe's *Parergon*, a work to which Lord Stowell refers as of eminent authority, it is stated—'For a man to marry his wife's sister, though she be not in the right line, ascending or descending, is a marriage expressly forbidden by the Levitical law.' This was the judgment of Baron Parke, who says 'that the

marriage of a wife's sister is illegal by the divine and human law.' The case of Sherwood *v.* Ray, a case of the same nature, was also condemned as incestuous by the Privy Council; so that in this, as in similar cases, the highest Civil Courts of the land, called upon to pronounce whether marriage with a wife's sister was allowable, have held that the marriage was contrary to the Divine law and the Levitical degrees, and therefore null and void as incestuous. In the last case, that of Fenton *v.* Livingstone, decided by the House of Lords in July 1859, and Court of Session in Scotland in 1861, the Lords who gave judgment, Lords Brougham, Cranworth, Wensleydale, and Chelmsford, decided that such a marriage was unlawful and the issue illegitimate, and was always so decided by the Civil as well as by the Ecclesiastical Courts of the country. Nothing can be more conclusive than the judgment of the Lords in this case, which is thus expressed by Lord Wensleydale :—'My opinion is that, by the laws of Britain, the marriage of a widower with his deceased wife's sister was always as illegal and invalid as a marriage with a sister, daughter, or mother was.'"

So much, then, as to the law of England, and it may be said also, as to the law of Ireland, which is precisely the same. What, now, as to the law of Scotland? On this also I have evidence strong, clear, and conclusive. In Erskine's "Institutes of the Law of Scotland," a standard authority, both the principle and law as to the degrees of propinquity and affinity are thus briefly stated :—

"Propinquity is distinguished by its different lines, and measured by degrees. A line in propinquity is a series of persons descended from the same stock or root. That line where the propinquity is constituted between the persons generating and generated, is called *the direct.* A father is, with respect to his child, in the direct line of ascendants. Where the persons related are not descended the one from the other, but have the same common parent by whom the propinquity is formed, the line is called *the oblique, transverse,* or *collateral.* In computing the degrees of consanguinity, according to the Roman law, every person

who was generated made a degree, without reckoning the common stock. By this rule, father and son were in the first degree of consanguinity, because the son is the only person generated; brothers in the second, uncle and nephew in the third, and first cousins or cousins-german in the fourth. The computation of the degrees of propinquity in the Canon law agrees precisely with that in the Roman, in the direct line of ascendants and descendants; but in the collateral the Canonists compute, not by the number of persons descended on both sides from the common stock, but by the number of generations upon one side only. According to this reckoning, cousins-german are in the second degree, because each of them is but two generations distant from the grandfather, who is the common stock; whereas they are by the Roman rule in the fourth. In the unequal collateral line, where one of the two is farther removed than the other from the common stock, the Canon law reckons the distance by the number of generations of the person farthest removed, *Decretal*, l. 4, t. 14, c. 9. Thus a niece is related in the second degree to her uncle, because she is related in the second degree to her grandfather, the common stock; and, by the same rule, she is no farther removed from her uncle's son, which abundantly discovers the absurdity of that method of reckoning. Affinity is that tie which arises in consequence of marriage betwixt one of the married pair and the blood-relations of the other; and the rule of computing its degree is, that the relations of the husband stand in the same degree of affinity to the wife in in which they are related to the husband by consanguinity; which rule holds also, *e converso*, in the case of the wife's relations. Thus, where one is brother by blood to the wife, he is brother-in-law, or by affinity, to the husband. But there is no affinity between the husband's brother and the wife's sister, which is called by doctors *affinitas affinitatis*, because there the connection is formed, not between one of the spouses and the kinsman of the other, but between the kinsmen of both. As to the degrees in which marriage is prohibited, the law of Scotland has adopted the

Jewish law, by Act 1567, c. 15, declaring that marriage shall be as free as God hath permitted it; and that seconds in the degrees of consanguinity and affinity, and all degrees farther removed, contained in the Word of God, may lawfully marry; by which manner of reference it would seem that our legislature hath considered the law of Moses in that matter to be obligatory upon all nations. By Lev. xviii. the following rules are established, either expressly or by consequence. 1*st*, Intermarriage between ascendants and descendants in the direct line is forbidden *in infinitum*, let the degrees of propinquity between the parties be ever so distant; for such marriages are universally agreed to be repugnant to the law of nature, and destructive of the ties of birth, Grot. De Jur. Bell. l. 2, t. 5, § 12, ver. 2. 2*dly*, Marriage, even in the collateral line, is forbidden *in infinitum* where one of the parties is *loco parentis* to the other, *i.e.*, where he is brother or sister to the direct ascendant of the other party. Thus, one cannot intermarry with his grand-niece, though he be as far removed from her in degree as first cousins are, both by the computation of the Civil and of the Canon law. 3*dly*, In every instance which falls not under either of these two rules, marriage is lawful in the second degree according to the Canon law, or in the fourth, according to the Roman; and consequently cousins-german may intermarry, and all that are farther removed than they. It may be observed, that the Act 1567, which was enacted not long after the Reformation, has followed the rule of the Canon law, as it was the common way of computing degrees in Scotland at that time, and continues to this day among the vulgar. 4*thly*, The degrees prohibited by the law of Moses in consanguinity, are, in every case, virtually prohibited in affinity; and by the aforesaid Act 1567, the prohibition is equally broad in the degrees of affinity as in those of consanguinity. Thus, one cannot marry his wife's sister, more than he can his own. In all this matter the rules are the same by the law of Scotland, whether the parties be related by full or by half blood."

If more than this is needed, take the following. Bell, in

his "Principles of the Law of Scotland," says, "In affinity or relationship by marriage, the husband and wife being *one*, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other." Professor More, in his late edition of the works of Lord Stair, an early and eminent institutional writer, makes his lordship aver the same thing, and he himself declares it in unmistakeable terms. Further, Mr Ferguson, lately one of the judges of the Consistorial Court in Scotland, gives us the following, in a review of the Laws of Scotland, on the subject:—

"By the Act of the first Parliament of James VI., it was 'statute and ordained that halie bond of marriage made by all estates and sorts of men and women be als lawful and als free as the law of God has permitted the same to be done.' It was, too, thereby further declared, 'that seconds in degrees of consanguinity and affinity, and all degrees outwith the samin contained in the Word of the eternal God, and that are not repugnant to the said Word, might and may lawfully marry at all times sen the viii. day of March, the zier of God one thousand five hundredth fifty-aucht ziers, notwithstanding ony law, statute, or constitution made in the contrarie.' Again, in the 4th section of the 24th chap. of the Confession of Faith, as renewed at the Revolution, and ratified by and engrossed in the statute chap. 5 of the first Parliament of King William and Mary, anno 1690, it is so expressed. The writer quotes the said section, and adds—'But the difficulties of explaining so as to reconcile the texts of Leviticus on this head were found to be so great that the Act 1649, chap. 16, was passed for the purpose. In was rescinded by the Act 1661 as illegal, on account of the rebellion. By the 18th chapter of Leviticus, ver. 12 and 13, the intermarriage of nephew with aunt is prohibited. *From parity of reason*, our law has extended this prohibition to the intermarriage of uncle with niece; and the criminal courts have punished the violation of the rule capitally, as incest (case of Strange, 24th April 1649; of Johnston, 8th June 1705). The application of this

rule to intermarriage by either spouse in widowhood with the relatives of the deceased, whether by consanguinity or affinity, within the prohibited degrees as thus interpreted, has likewise in various cases been capitally punished as incest by our criminal tribunals (case of Tannahill, 2nd March 1725; of Gourlay, 5th July 1626; of Blair, 7th September 1630.—*Report, Second Division*—see title). Nevertheless, a question is understood to have been agitated in private consultations, *which was lately brought to trial* in the Consistory Court, whether it was not lawful for a husband, on the decease of his wife, to marry her sister, either of full or half blood, or *vice versa* for a widow to marry the brother of her late husband. From the foregoing quotation it must, however, be evident that such marriages as are prohibited *must likewise be set aside ab initio*, if a regular action of nullity or of divorce shall be instituted during the lives of any of the spouses. Accordingly, in this shape the Commissioners have given that judgment upon the question, and this decree has been carried into effect without being subject to review."

I have already quoted from Dr Macrae's work a variety of important decisions given by the Civil Courts in England in the matter of incestuous marriages, and I now quote his excellent *resume* of like decisions in the Scottish Courts. He says:—

"The Scottish jurists and judges, no less than those of England, decided that the Levitical prohibitions were a part of the moral law, and agreed in carrying these to the same extent. Thus, Baron Hume declares, that with regard to the Civil Statute 1567, already noticed, 'that any equivocal passage should be construed for the restraining sense, being the most favourable to order and morality.' All the writers on Scotch law construe the Levitical prohibitions in the same manner, and thinking independently of the Church, yet come to the same conclusion, 'that the same degrees prohibited in consanguinity are also forbidden in affinity.' In the case more immediately under consideration, Erskine is express. He says 'that one cannot marry

his wife's sister more than he can marry his own;' and founds his authority on the Mosaic law. No case arose before the Civil Courts to afford opportunity to those Courts to say to what extent the prohibitions go, and what cases they include. In the older law and practice of Scotland, under the partial rule of Papal dispensations, it appears that no attempt was ever made to dispense in the case of marriage with a wife's sister. This law and practice are thus expressed by Lord Medwyn in his *Liber Officialis Sancti Andreæ*: 'Whatever may have been the motives that induced the Church thus to extend the prohibitions of the Levitical code, one necessary result was the great demand for dispensations from the head of the Church, and those wielding his authority. The Pope's dispensing power and its extent were the subject of constant discussion, in which the Canonists certainly never lost sight of the distinction between the prohibitions of nature or the Divine law, and those established by the Councils of the Church. Among the innumerable and daily dispensations for marriage, we have no intimation of any Papal dispensation being granted to parties within the Levitical degrees.'

"Although no question arose before the Civil Courts to test certain questions as to the Levitical degrees, one among others arose, and was settled by the Court of Justiciary. That Court, in 1705, in the case of Drysdale and Barbara Tannahill, she being the wife's sister, adjudged the marriage incestuous, and the parties guilty of incest, and therefore under the pains of death. The punishment, happily for the parties, was not exacted. It ended in the banishment of James Drysdale 'furth of the kingdom.' But in an age when even petty thefts were sometimes punished with death, I do not wonder that those crimes which are reckoned, at least in the Divine statute book, as more aggravated, were treated with a like severity. Theft is still punished, though not with the same rigour. Incest still remains a crime, but its criminal punishment, it would seem, has disappeared. How this is, I cannot pretend to tell, unless it be for this reason, that acts against the

property and person of man lie upon the surface, and are easily estimated; whereas crimes against marriage are deep, and their effect is not seen or considered by many, and their consequences are complex and more remote. But God, who is wiser than man, has taught us to denominate incest as a fouler crime than theft, and more derogatory to man's being and relations. The integrity of these depends upon the sanctity of marriage; and when this is lowered or corrupted, there is no surer sign of the moral decay of families and of states. The Divine Word assures us, that incest is one of these corrupters, and its voice is echoed by the page of history. That it should not now be punished as a crime is no symptom of moral health: it may please the relaxed sentiments of the disciples of Anacreon, but it cannot extort the approval of the followers of Moses and the Prophets.

"I noticed the judgment of the House of Lords, in the case of Fenton *v.* Livingstone. We saw that the Lords were unanimously of opinion that the marriage founded on was unlawful, according to the law of England; but the point at issue relating to succession to real estate in Scotland, it was referred to the Court of Session to denominate the marriage according to the law of Scotland. The Court unanimously ruled (January 24, 1861) that the marriage was unlawful; and its judgment is no less clear and express than the judgment of the Lords. The Lord President said, 'It is a question which I have considered now by no means for the first time—the first time judicially, but by no means the first time professionally; and I have never had a doubt upon the question. I think that there is a uniform interpretation, which runs through the whole Statute law and the law writers of Scotland upon this subject. It is clear and explicit that, in such a case as we have here, the marriage with the sister of the deceased wife, the relationship by affinity is held to be the same as by consanguinity, and that it is a forbidden degree for marriage. Now, that being the Statute law, and the construction that has been put upon it, I think, by every

writer on the subject, there is no room for our pronouncing any other judgment than that this was not a lawful marriage. It is the opinion which is expressed without hesitation by Stair and by Erskine, and by Bankton and by Mackenzie. It is also mentioned by Forbes and by Wallace, who had a good deal of experience in such matters, and was himself a commissary. But, still more, I think it is the opinion which is expressed by Professor Bell and by Professor More. It is the opinion also which is expressed by a gentleman of great experience in consistorial law, Mr Ferguson. I therefore have no hesitation in saying that, according to the law of Scotland, this was an unlawful marriage, *being within the prohibited degrees;* and in the view which I take of the case, the consequence of that is, according to the instruction we have got from the House of Lords, that this party was not a legitimate son of his reputed father, and cannot succeed to this estate.' Lord Ivory,—'I have no doubt upon either point raised here. I entirely agree in the conclusions at which your Lordship has arrived, and I adopt almost implicitly the grounds upon which these conclusions have been formed.' Lord Currie-hill,—'I think the view of the law is, that, as to this matter, parties in the married state are to be held as identified; that those related to the one in any degree are to be held to be related to the other in the same degree.' Lord Deas,—'When we come to the institutional writers, who treat of the question in a civil point of view, we find an entire coincidence of opinion,—all lay it down expressly, that the blood relations of husband and wife are held as related by affinity to the one spouse in the same degree as by consanguinity to the other.'"

I may state, in addition, as regards France, that even the Code Napoleon, decreed the 17th March 1803, and promulgated the 27th of the same month, declares—chap. i., article 162, "*In the collateral line*, marriage is prohibited between brother and sister, legitimate or natural, *and the affinity in the same degree;*" and as regards the whole Turkish dominions, the law of the Koran is:—"Marry not

women whom your fathers have had to wife (except what is already past), for this is uncleanness, and an abomination, and an evil way. Ye are forbidden to marry your mothers, and your daughters, and your sisters, and your aunts, both on the father's and on the mother's side, and your brother's daughters, and your sister's daughters, and your mothers who have given you suck, and your foster-sisters, and your wives' mothers, and your daughters-in-law which are under your tuition, born of your wives unto whom ye have gone in (but, if ye have not gone in to them, it shall be no sin in you to marry them), and the wives of your sons, who proceed out of your loins; and ye are also forbidden to take to wife two sisters, except what is already past, for God is gracious and merciful." Sale has this note after the words, "Forbidden to take to wife two sisters,"—"The same was also prohibited by the Levitical law."

This, in reference to a people who may marry if they please at least four wives, may not be regarded as important; it may be of interest, however, to state, as regards China, with its 400,000,000 inhabitants, that the law there is, and has been, to *punish marriage with a brother's widow with death.*

## CHAPTER VI.

### General Results.

I HAVE thus, taking the chief writers and chief authorities on the subject as my guide, as well as the law of nature, clearly demonstrated, I think—

1*st*, That the law of incest is plain and clear as laid down by Moses.

2*nd*, That the Jews have, when they did not maintain the lawfulness of polygamy, held the prohibitions in Leviticus xviii. to relate to incestuous concubinage or marriage—even the Talmudists maintaining that these prohibitions applied equally to cases of "nearness of kin" by affinity, as to "nearness of kin" by consanguinity.

3*rd*, That the early Christian Church must have adopted the prohibitions in Leviticus xviii., as to the lawfulness or unlawfulness of the degrees in marriage,—no new laws having been given to them, and no abrogation of the old laws having been made known to them.

4*th*, That the earliest decisions of the Christian Church of which we have any record, are against the lawfulness of all marriages prohibited in the Mosaic Code, and that down to the Reformation the Church's decisions were always to the same effect.

5*th*, That since the Reformation, with a few exceptions, Christian Churches, through their Ecclesiastical Courts and other indicatures, have maintained the binding obligation of the Mosaic Code, even to the prohibition of marriage with a deceased wife's sister, which they have inferentially drawn from that code.

6*th*, That the Roman Emperors in primitive Christian times, Christian States down to the Reformation, and general legislation in all the Protestant countries of Europe

and America since then, have been on this subject in thorough accordance with the creeds and confessions of the Churches; in other words, all Churches and Nations recognising the authority of the Bible as a basis of human legislation, have held and decided in essence or substance that, "A man may not marry any of his wife's kindred nearer in blood than he may of his own, nor a woman of her husband's kindred nearer in blood than of her own."

I say I have demonstrated, whatever may be thought or felt on the subject of inferential prohibitions or conclusions, that the law of Moses, as I have quoted it, has been as a Divine law common to all ages and peoples; that it is binding on all; and that, with few and rare exceptions, it has been by every Church and State, founding on the Word of God, recognised, accepted, and enforced among all. If there has been at any time, or if there is now, a disposition in some countries and among certain classes of society to alter the current of opinion and the course of practice, that disposition has not been shewn towards the clear and express prohibitions of the code. It has been evinced towards the inferential or logical deductions which have been drawn from it or added to it, by those who believe that the lawgiver of the Jews meant these inferences to be drawn; in other words, that he meant to convey that in every case in which a prohibition was addressed to the man, a similar prohibition was to be regarded as addressed in a like relationship to the woman; and in every case in which a prohibition was addressed to the woman, a like prohibition in relative circumstances was to be regarded as addressed to the man.

It is not my purpose to enter into a discussion on this point, about which, in certain cases, the wisest and best of men have differed—the same condition of things not in every instance being at all applicable in the matter of affinity to man and woman alike. It is enough that I give, as I have done, the strong and almost unanimous testimony of Churches and States against all the varieties of incest prohibited by Moses, and that I give

also their testimony against what they regard as other forms of incest not specifically prohibited by the same Divine lawgiver. If Churches and States hold that to be incest which Moses has not expressly condemned, how great must be the guilt of those who live an incestuous life, either by concubinage or marriage, under circumstances condemned alike by Moses, the Jews, the earliest Christians, the whole Fathers and Councils of the Churches to the Reformation, and the whole Ecclesiastical and Civil Courts of the Protestant world down to the present time. To this new feature of our existing immorality, I now come.

## CHAPTER VII.

### MARRIAGE WITH A DECEASED BROTHER'S WIFE.

WHATEVER differences of opinion exist as to the lawfulness or unlawfulness, according to the Code of Moses, or the supplementing of it by the opinions and decisions of the Churches, as to marriage with a deceased wife's sister, one could scarcely imagine it possible that there should exist the slightest doubt as to the gross immorality and incestuality involved in marriage with a deceased brother's wife. Those, of course, who hold that relations by affinity are synonymous with relations by consanguinity cannot see, or assert they cannot see, any essential difference between the two; while those who make their observations beyond mere words, and consider seriously and intelligently the peculiar conditions under which a man takes to himself the wife of his deceased brother, compared with those under which a man takes to himself the sister of his deceased wife, arrive at the conclusion, which is forced upon them, that the difference is very great and very important indeed. It is not necessary to do more than suggest to those acquainted with married life and marriage obligations, how altogether and absolutely different it is to unite oneself to a woman with whom a brother has cohabited, and by whom possibly she may have borne children, and to unite oneself to a sister-in-law who has had no connection of a conjugal nature with blood relations of your own. The suggestion cannot be pushed as far as it might, and probably as far as it should, in a work designed to pass into the hands of the general public; enough, however, has been hinted at, to indicate to every well informed and thoughtful mind that, whatever may be said on the subject of affinity in marriage relationships, there is between a man

living with or marrying his deceased wife's sister, and a man living with or marrying his deceased brother's wife, a well marked natural line of difference—a line so distinct and clear that what may appear to be doubtful or equivocal in the former case, must be deemed and taken to be unnatural and incestuous in the latter. I have already said that the Mosaic Code most distinctly and most emphatically prohibits the marriage of a man with his deceased brother's wife. Here is the language of the Divine Lawgiver on the subject, in Leviticus xviii. 16:—"THOU SHALT NOT UNCOVER THE NAKEDNESS OF THY BROTHER'S WIFE: IT IS THY BROTHER'S NAKEDNESS." It is even more explicit in Leviticus xx. 21:—"IF A MAN SHALL TAKE HIS BROTHER'S WIFE, IT IS AN UNCLEAN THING: HE HATH UNCOVERED HIS BROTHER'S NAKEDNESS: THEY SHALL BE CHILDLESS."

There can be no manner of doubt about the meaning of this; nevertheless, it is necessary to state that every effort has been made by sensualists and libertines to torture its meaning and destroy its effect. They *will* have their lusts and passions gratified at the expense of every principle of nature and every obligation of law, and hence they make the most desperate efforts to still the voices of their own consciences and the protests of an indignant public, by resorting to the meanest and most contemptible refuges of evasions and lies. One of the arguments, if it can be so called, adopted by this class of sensualists, is that the quotations I have given do not speak of a brother's *widow*, but of a brother's *wife*, and that, therefore, they must be understood as forbidding connection with a brother's wife only during that brother's lifetime, but not after his death, when the wife has become a widow. Dr Lindsay most summarily and most satisfactorily disposes of this argument in the work to which I have already referred, and I cannot do better than quote his reply. Putting the argument in the form I have given it, he says:—

"This is as frivolous an argument as could well be

imagined; and it manifests the grossest ignorance of the style of expression characteristic of Scripture. The word widow is not of frequent occurrence in the Bible, and where it does occur it always designates the desolate and solitary state of the individual mentioned, but it never indicates simply her relationship to her departed husband. In English, we sometimes, although not with propriety, speak of a man's widow—Mr Smith's widow, Mr Brown's widow—but the Bible never adopts this style. Where the fact of a woman's widowhood and solitary helplessness is to be pointed out, she is called a widow, as in the case of the widow woman of Zidon; as in the common expression, the fatherless and the widow; as in the promise, I will plead the cause of the widow. But where a woman's relationship to her departed husband is to be pointed out, there she is invariably designated his wife. Proofs of this position might be exhibited in profusion. 'Thou must buy it of Ruth the Moabitess, the wife of the dead' (Ruth iv. 5). 'Thou hast killed Uriah the Hittite with the sword, and hast taken his wife to be thy wife' (2 Sam. xii. 10). 'The wife of the dead shall not marry without unto a stranger' (Deut. xxv. 5). So after Er's death, mention is made of his wife (Gen. xxxviii. 8). After Saul's death we read of his wives (2 Sam. xii. 8). After Ananias's death, Sapphira is still designated 'his wife' (Acts v. 7). After a brother's death is mentioned in Deut. xxv. 6, the surviving wife is still spoken of as the dead brother's wife. And I will be bold to affirm, that there is not one single instance to be found in Scripture where a woman is designated the widow of her departed husband, merely to point out her relationship to him. There are only two apparent exceptions to this statement, viz., in Job xxvii. 15, and Ps. lxxviii. 64; but it is only necessary to look at these passages to perceive at once that the object of them is to describe the survivors as wretched and forlorn. The husbands were wicked men, consigned by God to destruction; and part of their punishment was that the children whom they left behind had no bread to satisfy the cravings of hunger, and their

widowed spouses cared so little for them that they shed not a tear in remembrance of them. Nothing, therefore, but the most culpable ignorance could found an argument upon the use of the word 'wife' instead of 'widow' in the verse at present under consideration. Beyond all question, it is marriage with a deceased brother's wife that is forbidden by Moses."

He goes on to say:—

"For the sake of argument, let us suppose that wife is employed in this verse as distinguished from widow, and that, consequently, it is only connection with a brother's wife that is forbidden, but not marriage with a brother's widow. Then just look at the frightful conclusions which we are compelled to draw. We must be faithful to our principle. We must not apply it to one verse, and then quietly slip it out of sight when we are reading the other verses of the chapter. We must follow its guidance throughout, and we shall soon find that it legalizes far more marriages than any person wishes to tolerate. What says verse 8? 'The nakedness of thy father's wife thou shalt not uncover;' but wait till the old man be dead, and then you may marry his widow. What says verse 11? 'The nakedness of thy father's wife's daughter thou shalt not uncover, she is thy sister;' but when your step-mother becomes a widow, then the prohibition falls to the ground. So although you are forbidden to marry your son's wife, yet the prohibition supplies no reason why you may not marry her when your son is dead. An uncle's wife, too, is a forbidden object; but an uncle's widow may be married without scruple. Now, are those who advocate the scriptural lawfulness of marrying a brother's widow prepared to admit the purity and propriety of all these other connections? Are they prepared to petition Parliament to legalize the marriage of a man with his step-mother, with his half-sister after their father's death, with his own son's widow, and with his uncle's widow? If they are not prepared to defend these connections, then they must give up the foolish notion that wife is to be

understood as opposed to widow in this chapter. This notion will carry them, if they put themselves under its guidance at all, a far greater length than they are disposed to go. Consistency must be preserved in the signification attached to the word wife in the several prohibitions of the chapter; and this cannot be done without either establishing the propriety of some very monstrous marriages, or conceding that the 16th verse prohibits connection with a brother's wife, whether that brother be dead or alive."

Still further on, he remarks :—

"Let us look a moment longer at the proposed method of interpreting the word wife. It is alleged that a brother's wife is forbidden, but not his widow. But surely such a prohibition would be altogether unnecessary. Is it not sufficiently comprehended under the general law relating to adultery, a sin which Moses condemns in most explicit terms, and to which he assigns the punishment of death (Lev. xx. 10). It is one of the greatest enormities to touch the wife of a living man, whether he be a relative or not. And this being the case, what occasion is there specially to forbid intercourse with a living brother's wife? In fact, such a prohibition, accompanied with a statement of the relationship as the ground of it, could only have the effect of weakening the influence of the law against adultery. You must not touch a living brother's wife, he is your own flesh and blood. If he were only a neighbour, it would be a matter of less importance. A series of prohibitions, all forbidding intercourse with the wives of certain relatives, and stating their relationship as the reason, would inevitably leave the impression upon the mind that, if in sinning you kept outside of the limits specified, and took the wives of men who were not related to you at all, you would not be on very dangerous ground. Nay, not only would the passage before us, interpreted as our opponents view it, seem to afford encouragement to adultery, or, at least, to diminish its apparent evil, but it would also most certainly legalize polygamy to women. For we have seen that in chapter xx. 21, where the same relationship as in

xviii. 16 is spoken of, the classic word for marriage is employed. Now, if we must suppose the first brother to be still alive, and the relationship of the other brother to him to be the reason why marriage with his wife is forbidden, then would it not follow that, if the relationship were more remote, or if there were no relationship at all, a man might marry his living neighbour's wife, and both of them might have her in common? You are not to marry your living brother's wife, he is your brother; but you may marry your neighbour's wife, and possess her in common with him. That woman, therefore, would lawfully have two living husbands, both exercising all the rights of husbands. It is believed by many that polygamy, in the case of men, was tolerated or winked at by the Mosaic law; but it has never been imagined that polygamy in the case of women was allowable in any circumstances. But on the principle which we are now opposing, it would be as fair an inference, from the 16th verse, that polygamy was allowed to women, as it is from the 18th, that polygamy was allowed to men. The 18th verse says virtually, according to the view of our opponents, you are not to take a wife to her living sister, but you may take another, who is not her sister. Now, if the 16th verse says that a woman is not to be married to the brother of her living husband, does not this equally imply that she may be married to an additional husband who is not related to the other? The two conclusions are identical, in so far as regards coherence with their respective premises. Whatever countenance the 18th verse may be supposed to give to polygamy in the case of men, the very same countenance does the 16th give, if it be only a living brother that is spoken of, to polygamy in the case of women. Both sexes have only to take care that the second spouse be not too nearly related to the first, and then the woman may have two husbands living with her at the same time, as well as the man two wives. This was the law of Moses, if wife is to be understood as distinguished from widow in this chapter. But the idea of a woman having two living

husbands is monstrous. This is a species of polygamy which the most degraded nations have held in abhorrence. 'The latter of these two,' says Taylor, 'was never thought of or put in practice by the most barbarous nations of antiquity, many of whom, however, indulged in the other sort of polygamy, and allowed an unlimited number of wives.'"

Proceeding on the assumption that even all this might not be regarded as a sufficient answer, he says:—

"Another argument, which demonstrates that the brother's wife here spoken of must be viewed as a widow, may be grounded upon the vast difference between the punishment assigned to adultery, and that with which the taking of a brother's wife was to be visited. Both were offences of high criminality. The taking of a brother's wife is designated an unclean or abominable thing. Yet the punishment of adultery was vastly more severe. The adulterer and the adulteress were both to be put to death, without mercy, Lev. xx. 10; whilst of the brother and the brother's wife, it is simply said, they shall be childless (Lev. xx. 21). Now, is it possible in these circumstances for any man to entertain the belief that the first brother was conceived to be still alive? Why, in this case there would have been adultery, aggravated by the additional guilt mentioned in the verse of uncovering a brother's nakedness. Were adulterers, then, to be put to death; but if they added incest to adultery, were their lives to be spared? This were indeed most marvellous legislation. For one crime no mercy; but add another to it, and the stroke of vengeance shall be greatly mitigated. Would not this be a bounty upon crime? For adultery you must die; but if the adultery be committed with a brother's wife, not a hair of your head shall fall to the ground. This is a piece of unmitigated absurdity. It is sheer folly to contend that the brother's wife spoken of by Moses was not a widow.

"These several considerations place it beyond the possibility of doubt, that it is the relict of a deceased

brother that is spoken of in Lev. xviii. 16. Indeed, the usage of the Hebrew tongue, of which so many examples have already been adduced, settles the import of the word 'wife' in a connection like the present, independently of all other considerations. And, therefore, it is clear as daylight, that marriage with the wife of a deceased brother stands condemned in the Word of God as an immorality (Lev. xx. 21). The unreasonableness of the objection, that there is no reference at all to marriage in any of the prohibitions embodied in this chapter, has already been considered; and it has been shown that what is forbidden is intercourse between the persons specified, whether in marriage or out of marriage. And if marriage with a brother's wife was an immorality, an unclean and abominable thing, when entered into by Jews, it is equally an immorality in all countries and ages of the world. The permanent and universal obligation of the prohibitions contained in the Mosaic code of incest has been shown by a variety of considerations. The connections forbidden by Moses were viewed by God as constituting ground for a charge of wickedness even against the Canaanites, and that, too, before the promulgation of the Mosaic law at all. In all the things specified by Moses, the Canaanites had transgressed, and therefore God abhorred them as vile and filthy sinners. If marriage, then, between a man and his brother's wife was denounced as a wickedness among the Jews, and was charged as an immorality against the Canaanites, much more, without doubt, is it deserving of reprobation among those who enjoy the exalted privileges of the gospel. It is one of those things which ought not once even to be required to be named amongst Christians."

There is still another argument, and an apparently feasible one, urged by the sensualist who claims to marry or live with his deceased brother's wife or widow. It amounts to this, that God himself, as in Deuteronomy xxv. 5, commanded one brother, when another had died without children, to marry his wife for the purpose of raising up seed to his brother, and thus preserving

his name in Israel. I again meet this with the valuable and conclusive reasoning of Dr Lindsay, as anything I could say would not be closer to the point, or at all so influential or exhaustive. Thus he expresses himself, quoting Deuteronomy xxv. 5:—

"Here, it may be remarked in passing, we have a striking instance of the invariable use of the word wife, already contended for; the relict of the deceased brother is not called his widow, but his wife, and she never is called his widow, but always his wife. To proceed, however, the point of the objection made to our argument is this, that God never would have permitted, in any case, the marriage of a man with his deceased brother's wife, if such a connection had been in itself a sinful thing. Would God authorise a man to commit sin? And forthwith it is concluded that a brother's wife is in all cases just as legitimate an object of love as any other woman, and the plain, undeniable sense of Lev. xviii. 16, is set aside. Whereas, it is obvious that, if the objection were a sound one, and fairly put, then the inevitable conclusion would be that Leviticus and Deuteronomy contradicted one another; for the permission or command is not more plainly expressed in Deuteronomy than the prohibition is in Leviticus. It should be remembered, too, that in Lev. xx. 21, marriage with a brother's wife is expressly designated 'an unclean thing,' a word which Gesenius explains by 'abominatio, impuritas,' stating, at the same time, that it is used 'de peccato quodam nefando, ut incestu.' The objection, grounded upon Deut. xxv. 5, to the conclusion drawn from Lev. xx. 21, regarding the unlawfulness of marriage with a brother's wife, is not one that has the weight of a feather; and it is astonishing that men of judgment and sense should allow themselves to be misled by it. It may be repelled in two ways, either of which alone is sufficient to demonstrate its hollowness. First of all, I solicit attention to the distinction between the more fundamental principles of morals and the less fundamental principles of morals—the distinction between those principles which have their foundation in the nature of the

Divine Being, and those which have their foundation in the will of the Divine Being. Principles of the former kind are such as those mentioned by our Lord, the two great commandments on which hang all the law and the prophets; thou shalt love the Lord thy God with all thine heart, and with all thy soul, and with all thy strength, and with all thy mind; and thou shalt love thy neighbour as thyself. Now these principles are absolutely immutable. Even God himself—I speak with all reverence—cannot alter or suspend them. The Sovereign of the universe cannot make it to be right for a man to hate his Creator, or to hate his neighbour. But when we come down to particular applications of the great general principles of morals—when we come to those minuter regulations which God has been pleased to appoint for the guidance of his creatures—the case is widely different. They are what they are, just because God has willed it so. That is the highest reason we know, or need to seek for their existence; and God might have so constituted society that very different regulations would have been proper and requisite. For example, society is so constituted, not by any necessity inherent in the nature of things, but by God's will, that each individual is required to labour within a definite sphere, and is permitted to enjoy the fruits of his own labour. Private property, therefore, is at present a right thing; but God might make such arrangements that private property would be a wrong thing; and there is reason to believe the time will come, possibly even in the present world, but certainly in the future, when there shall be no private property at all, but when the very idea of it shall be a sin. It is right at present; but some day soon it will be wrong. Then, again, the relation between the sexes is the result of God's will or positive appointment. He has made it what it is, and it is His will that must dictate the rules for their intercourse. He might have made the relation different. He might have created two women for every man; or he might have varied the relation in many different ways, and whatever he chose

to command would have been right. Not that God's commands are ever arbitrary. They are always conformable to the nature of things; but the nature and order of things are themselves of God's appointment. What he chooses to command in any given relation is our highest rule; and if he varies the command in altered circumstances, our duty varies accordingly. A thing may be right to-day, when God commands it, and wrong to-morrow, when God forbids it. It may be right in one man, who has God's sanction, and it may be wrong in another, who has God's prohibition. Many illustrations of these principles might be brought forward. Theft is undoubtedly a sin. To borrow with the purpose of not returning is a very grievous offence. To flee from a place, carrying away what does not belong to you, is a gross immorality. Yet God commanded the children of Israel, when they were preparing to flee from Egypt, to borrow every man from his neighbour, and every woman from her acquaintance; and they did so, and they departed laden with the spoils of the Egyptians. Was this a sin in the Israelites? Was it wrong in God to give them such a command? God forbid that any of us should think so. But if the Israelites had done what they did without express divine authority, they would have been thieves, and robbers, and swindlers. Again, murder is undoubtedly a sin. To take away the life of another, who is not harming us, is a grievous offence. To kill a man, with the view of seizing his possessions, is murder and robbery combined. But God commanded the children of Israel to march against the Canaanites, to put them indiscriminately to death, and to take possession of their entire country. Was it a sin in the Israelites to do so? And was it wrong in God to give them such a command? Nobody but an infidel will admit such a thought into his mind. The children of Israel acted with perfect integrity in the matter, and their conduct was well pleasing to a God of infinite holiness. But if they had attacked the Canaanites of their own accord—if they had marched against them without any authority from God, they would have

been acting the part of murderers and plunderers. These are cases which make it clear and undeniable that God may at one time issue a command directly in the teeth of what he has given forth at another; that he may lay down a general principle, and in particular cases suspend the obligation of that general principle, and authorize what is in direct contradiction to it. And in both cases we act rightly when we follow God's direction. The very same action may be right or wrong, a sin or a virtue, just according as God has forbidden or authorized it. Now, apply these principles to the prohibition regarding marriage with a brother's wife: the general law is, You are never to touch her, it is abomination. But under the old economy there was a special case, where, for a special purpose connected with the distribution of inheritance among the Jews, it became not only allowable, but a duty to marry the wife of a brother who had died childless, and whose name would otherwise have perished from the land. The general law was binding in all cases but one. In that one case an act became right which in other circumstances would have been wrong, just as the plundering of the Egyptians and the extermination of the Canaanites were commendable deeds when they were commanded, but would have been infamous villanies if done at the mere will of the Israelites themselves. It is perfectly childish to argue, from the exceptional case in Deuteronomy, that the thing there permitted in given circumstances cannot be wrong in any circumstances whatsoever. Conceive a child put into a garden. He is told he is not to enter into a certain arbour which is pointed out to him. Afterwards, however, he is told he may go into that arbour if heavy rain should come on. Now, just think of the boy reasoning thus with himself: The permission to go into this arbour at all clearly shows that there is nothing wrong in the thing considered in itself; and therefore I may enter it at all hours, whenever it strikes my fancy. Could the dullest boy in existence deceive himself by this argumentation? But this is the miserable logic by which an express law of

God is to be set aside—a law as plain and explicit as any commandment within the whole compass of the sacred oracles. 'Thou shalt not uncover the nakedness of thy brother's wife—it is an unclean thing.' The objection to the idea of there being any sin in marrying a brother's wife, drawn from the exceptional case mentioned in Deuteronomy, may be repelled in another way. A parallel case, of precisely the same nature, having reference to the intercourse of the sexes, may be adduced. Every man will allow that the marriage of a brother with his own sister, of two persons who are the children of the same parents, is a most wicked marriage. It is incest, if there be such a thing as incest at all. Two persons so circumstanced would be excluded from the fellowship of every Christain church in the world. Yea, they would be driven from the society of savages. Universal execration would dog their steps wherever they went. Yet there was a time when God commanded brothers and sisters to marry one another, and when, consequently, it was perfectly right and proper for them to do so. How many Adams were there? Only one, all orthodox Christians believe. How many Eves were there? One Eve to the one Adam. One man and one woman were the root of the whole human race. It is regarded as a very grave heresy to say there were two pairs originally created. Well, did not God say to Adam and Eve, 'be fruitful, and multiply, and replenish the earth'? But was not this a positive command to the children of Adam and Eve to marry one another? Beyond all possibility of doubt it was. Cain, and Abel, and Seth, and whatever other sons Adam had, were commanded to marry their own sisters; and their conduct in doing so was perfectly blameless; and if they had not done so they would have been resisting God's will, and the human race would have died out immediately. Now, if it be said that the command in Deuteronomy, to marry the wife of a deceased brother in certain specified circumstances, demonstrates that there could be nothing sinful in such a connection in any circumstances, equally may it be affirmed that the command to Cain, and

Abel, and Seth, to marry their own sisters, makes it obvious that the marriage of a brother with a sister is not in itself a sinful thing. The one conclusion is just as valid as the other. They are identical in so far as connection with their respective premises is concerned. But they are both miserable sophisms. The marriages of Cain and Abel were right, because God commanded them; but the marriages of brothers and sisters now are wrong, because God has forbidden them. So the marriage of a Jew with his childless brother's wife was right, because God authorized it; but it was wrong in all other circumstances, and it is wrong now, because God has utterly forbidden it. The whole case is transparent as day. Our opponents themselves, when it suits their own purpose, can allow that a thing may be sinful at one time, and yet not sinful at another. They allow this with regard to polygamy. They say polygamy is now a sin, and a sin, too, of gross turpitude; and yet they maintain that God sanctioned polygamy among the Jews of old. The lawfulness of polygamy is confessedly implied in the view they take of Lev. xviii. 18, the verse regarding two sisters, to which we shall come immediately. Now, how is this consistent with their own reasoning, from the passage in Deuteronomy? The principle they hold by there is, that what God has at any time sanctioned cannot be in itself sinful. Well, if God ever sanctioned polygamy, then they must hold it to be at all times a sinless practice, as lawful to us now as ever it was in any age of the world. If, on the other hand, they say that polygamy is now sinful, then their own principle compels them to acknowledge that it cannot be sanctioned in the famous verse about two sisters, and that, consequently, their whole interpretation of that verse falls to the ground. Their principle shuts them up to one or other of these alternatives. Not so, however, ours. We can imagine that God might in one age tolerate the practice of polygamy, and in another utterly forbid it; and that, consequently, in the one case it would be altogether free from blame; and in the other be an act of undoubted

wickedness. But all those who argue in the manner above described, from the exceptional case in Deuteronomy, are bound, by their own principle, either on the one hand to maintain the Scriptural lawfulness of polygamy to the end of the world; or, on the other, to confess that there can be no sanction of polygamy in Lev. xviii. 18, and, consequently, no warrant for the successive marriage of sisters. They may take either alternative they please, and either the one or the other will perfectly subserve the interests of my argument. Another proof of the folly of inferring, from the Levirate law in Deuteronomy, that marriage with a brother's wife ought not to be considered sinful in itself, may be drawn from the effect which this view necessarily exerts upon all the other prohibitions of the law of incest. For when Moses says, in chapter xviii. 16, 'Thou shalt not uncover the nakedness of thy brother's wife;' and in xx. 21, 'It is an unclean thing;' if it be a fact that, notwithstanding these words, there is no sin in marriage with a brother's wife, then it must equally be a fact that, notwithstanding the use of the same expressions in verses 7, 9, 10, &c., there can be no sin in marriage with a mother, or a sister, or a grand-daughter. If the words, 'Thou shalt not uncover the nakedness of,' do not, in verse 16, designate anything that is sinful in itself, then on what principle can it be maintained that these words designate what is sinful in the other verses? They either mark out a sinful action, or they do not. If they do, then marriage with a brother's wife is sinful; if they do not, then marriage with a mother, or a sister, or a grand-daughter, is altogether free from blame, so far as we can gather from the Word of God. There is another consideration of some little weight. It is commonly supposed that, because Deuteronomy is the last book of the Pentateuch, therefore the Levirate law was posterior to the law in Leviticus regarding a brother's wife, and is to be considered as a partial suspension of that law. I am rather disposed to agree with those who think that the Levirate law existed as a custom long before the days of Moses; and, therefore, instead of viewing it as a

suspension of the Levitical prohibitions, I rather consider the Levitical prohibitions as a restriction designed to check the evils which had grown out of an abuse of the old custom. That custom is allowed to continue, and sanctioned; but all other connection with a brother's wife is expressly forbidden. In all cases but the one specified, it is denounced as an unclean and abominable thing. And this view best harmonizes with the great fact, to which it is impossible to shut our eyes, and to which we shall have occasion to refer afterwards, that from the days of Adam downwards, there has been a gradually increasing stringency in the laws relating to the intercourse of the sexes. Not increasing liberty in this respect, but increasing restraint, is the prominent feature of all God's legislation. If any think it strange that God should both lay down a general law forbidding marriage with a brother's wife, and should also sanction a departure from that law in a specified case, the only reply we need make is, that we are not bound to account for the apparent discrepancy. *There* is the law, and *there* is the exception, both clear as noonday, and both having the seal of God affixed to them. It is not difficult, however, to perceive reasons why, even on the principle of the general unlawfulness of marriage with a brother's wife, the permission of this connection, in the particular case specified in Deuteronomy, should not be productive of any evil. What is the reason in nature, or the ground upon which it has been judged requisite to restrict marriage within certain limits? Why is there such a sin as incest at all? It is commonly understood that the reason for branding certain connections with a peculiar stigma lies in the intimate familiarity which obtains between near friends, and in the innumerable opportunities which they would have for improper freedoms, if certain limits were not prescribed beyond which it was considered abominable and detestable to go. The only safety for society, the great bulwark against a total degeneracy of manners, lies in its being universally understood and felt that certain connections are an utter abomination, and not for one

moment to be thought of. How could brothers and sisters be brought up together from infancy, while yet the character was not matured and established, if their connection were not considered in the smallest degree more sinful and base than the connection of any other males and females in the world. This is the secondary ground or reason why it was requisite there should be a law of incest at all; and on this ground, even in the absence of all revelation, every well-governed nation would require to establish some law of incest; and every nation has, in fact, done so to a greater or less extent. The heathens, Paul tells us, considered some connections vile. Now, keeping this reason for a law of incest in view, we see at once why no damage could ensue from the special exception made in Deuteronomy. The connection of a man with his brother's wife was a forbidden connection, like a number of others; and, therefore, the parties might meet with the closest familiarity as friends, without any impure idea being for a moment suggested in any circumstances, because a marriage connection was not for a moment to be thought of. There was only one single position of circumstances where such a marriage could take place. But so long as the first brother lived, these circumstances could not possibly arise. It could not be known that a man would die, and leave a childless widow, till some considerable time after his death. The exception, therefore, made to the general law, was not of a kind to interfere with the purposes which that general law was intended to serve. But whether these considerations go any length or not in showing that the exception made in Deuteronomy would not interfere prejudicially with the purposes of the law laid down in Leviticus, they are not at all necessary to our argument. They are a digression. We are not bound to account for the singularities of the law. Our sole purpose is to show what the law was, and the conclusion, we maintain, stands impregnable, that the marriage of a man with her who had been the wife of his brother is expressly reprobated in the Word of God as an unclean or abominable thing. Such a marriage was one of

those misdeeds which, even as practised by the Canaanites, was viewed by God with abhorrence, and formed part of the ground of their extermination; and it must be still more abominable under the purer and more perfect dispensation of the Gospel. The exceptional case mentioned in Deuteronomy never interfered, even in the times of the old covenant, beyond a definite point, with the obligation of the general law; and the exceptional case now has no existence, for it was connected with the Jewish distribution of property, and the division of the people into tribes and families with their several distinct inheritances. The marriage of a brother's wife, then, is utterly opposed to that permanent law of morality which has existed from the earliest times, which was obligatory upon the Canaanites, and which is embodied in the Gospel of Christ. The command forbidding such a marriage is as binding upon Christians as the command forbidding adultery. By no principle can the eighteenth chapter of Leviticus be excluded from forming a part of Christian law which will not equally shut out the twentieth chapter of Exodus, where the ten commandments are detailed. There is as little of a ceremonial or political character in the one as in the other; and if any part of either has been abolished or modified, this must be proved from the New Testament. Less strictness than is enjoined in these chapters with regard to moral conduct cannot be obligatory upon Christians; although it is quite conceivable that more purity and more self-denial may be required by the precepts of the Gospel."

This, I think, will be deemed conclusive. The abettors of incest, however, have still another refuge to which they fly, though it proves no safer than those out of which they have been driven. Though they have been shewn that the prohibitions of the 18th chapter of Leviticus are of universal and permanent obligation, that they were obligatory upon the Canaanites by the law of nature and enjoined upon the Jews by positive statute, it therefore could not be regarded as originating or ending with the

Jewish policy. They urge the argument and cling to the delusion that Christianity has not adopted the Mosaic code; in other words, that it has either not accepted or has modified the laws of Moses. This argument seems to be urged as a last resort. Let us look at it, with the simple remark, corroborated by the whole scope and tendency of the New Testament, that a much higher and purer morality is enjoined and required under the Gospel dispensation than ever was commanded or expected under the Jewish dispensation. Advances in morality have been upward and onward since the birth of Creation's Lord down till the present time. The children of Adam, so far as is known, married one another. Abraham married a wife who was his half-sister, a connection afterwards forbidden. Jacob married two sisters at the same time, which the Mosaic law subsequently prohibited. Moses's father married his own aunt, a relationship which the son subsequently proscribed. Polygamy, which was tolerated by Moses, and which brought so much evil upon Israel, is condemned by the Gospel. The author from whom I have just quoted says on this subject:—

"The increasing strictness of the marriage law from age to age is a phenomenon requiring some attention. Some, perhaps, may put the question, how could a marriage be right in one age and then become wrong in another. But the fact is palpable that it was so. Passing from Adam to Abraham, and from Abraham to Jacob, and from Jacob to Amram, and from Amram to Moses, and from Moses to Christ, we see that things which were permitted in one era were forbidden in the succeeding,—the prohibitions multiplying as we go along. We are not bound to account for this, nor does the validity of our argument at all depend upon the satisfactoriness of any explanations that may be offered. With this proviso the following remarks are submitted. The moral law, in its intrinsic ideal excellence, was always the same. But the extent to which it can be embodied in a judicial or municipal law, for the government of a people, varies at different times. In a state of society

where the moral consciousness has been but little evoked, if the common law were made too elevated in its requirements, it would be incapable of execution, and would thus defeat its own end. Among the rude people for whom Moses legislated, a marriage law, or any law as strict as the Gospel now requires, would have been unsuitable. Things done by a child, before the moral sense is awakened, are never tried by the same standard which is applied to a full grown man. Polygamy, therefore, was tolerated in remote times, and a license of divorce also was tolerated, which is now altogether condemned. Does not our Lord himself say, 'Moses, because of the hardness of your hearts, suffered you to put away your wives, but from the beginning it was not so. At the beginning God made them male and female, and said for this cause shall a man leave father and mother, and shall cleave to his wife, and they twain shall be one flesh' (Matt. xix. 3, 4, 5). When the root of the human family, therefore, was first planted upon this earth, it was God's purpose that a perfect marriage law should exist among them; but on account of the degradation which ensued after the fall, a less perfect marriage law was permitted for a time, the object being gradually to educate mankind up to the point where the perfect law of the Gospel, the law originally designed for the world, might be applied. And these considerations perfectly harmonize with the remark already made, that there cannot possibly be less incumbent upon us now, than is embodied in the marriage law of Moses, although there may be a great deal more."

The question still occurs, however, What says the New Testament on the subject? I again appeal to the valuable work of Dr Lindsay. On this he is as full, as clear, and as conclusive as he is in every other branch of his exhaustive treatise. He says:—

"There is but little reference in the New Testament to any of the cases of forbidden connection which are described in the Pentateuch; and there is no law at all laid down upon the subject. Now, if we conceive that the special prohibitions of the Jewish code of incest have been abrogated,

like the laws of sacrifice, of meat-offerings, and of drink-offerings, then it certainly is remarkable that nothing should have been enjoined under the Gospel, touching a matter of such vital importance. Who is to determine what shall be now considered incestuous, or is nothing to receive this designation at all? On the other hand, if it be supposed that the Mosaic prohibitions regarding incest were part of the moral law, and consequently of permanent obligation, then the comparative silence of the New Testament is fully accounted for. Nothing needed to be said regarding incest, as the old law remained unrepealed. Still there are two cases incidentally mentioned in the New Testament, not, indeed, in the way of propounding a law, which on our principles was altogether unnecessary, but in the way of reproving existing acts of wickedness. These throw very considerable light upon the subject. They confirm the views which have been advanced. In the three synoptical Gospels* we are informed that John the Baptist was imprisoned on account of having reproved Herod for his marriage with his brother Philip's wife. This fact, indeed, does not furnish the kind of evidence or information which many persons have imagined, for Josephus mentions that Philip was still alive when Herodias left him. But it does not therefore follow that it was adultery only for which Herod was reproved. If there had been no greater wickedness in Herod's taking his brother's wife than any other man's wife—if she had been just as legitimate an object of courtship to him, on the supposition of her becoming a widow, as any other woman or widow would have been—then we should have expected Herod to be blamed simply for taking another man's wife. But it is impossible to read the accounts given by all the Evangelists who have mentioned the occurrence, without perceiving that John's reproof of Herod receives its main emphasis and severity from the fact, that it was not merely another man's wife, but his brother's wife, that he took. The relationship of the two husbands is the point most prominently

* Matt. xiv. 3; Mark vi. 7; Luke iii. 19.

exhibited in all the accounts. This was the most aggravated feature of the offence, and it has the leading place assigned to it in the reproof. Herod's sin was incestuous adultery. Perhaps no man of plain simple understanding ever yet read the Gospels without having the impression produced upon his mind that it was the relationship of Herod to Philip which John meant to point out, as what gave its characteristic feature to the sin which he reprobates. And if this really was the case, then John must have been looking back to the ancient law of incest, recorded in the book of Leviticus, as still obligatory upon the people of God. It is remarkable, too, that Josephus takes the same view of the subject; for while he mentions that Philip, who also bore the name of Herod, was alive, he by no means exhibits Herod's sin as a simple case of adultery. He considers it as a violation of certain special laws which, though not perhaps recognized among Gentiles, were yet to be found in ancient Jewish documents. What are his words? 'But Herodias, their sister, married Herod, son of Herod the Great, and of Mariamne, daughter of Simon the high-priest; and to them was born Salome; after whose birth, Herodias, having made up her mind to violate the laws of her country, was married to Herod, brother, by the same father, to her husband, whom though still in life she forsook.' Now, what is meant by the laws or customs of her country which Herodias is here represented as violating? Are they merely the one law against adultery? But that was a law that existed in all countries as well as Judea. Beyond all question, the principal reference of Josephus is to the prohibition contained in the Pentateuch of marriage with a husband's brother. This was a law handed down among the Jews from their remote ancestors: it was an institution which their *fathers* had received. That the Jewish historian refers to this law, is evinced by the care which he takes to point out the precise relationship between the two husbands of Herodias—they were brothers, sons of the same father. And not only so, but he states that Herodias had a daughter by her first husband still alive; for

the marriage of Salome is mentioned almost in the next sentence. Hers, therefore, was not the position in which alone, according to the exceptional law in Deuteronomy, she ever could be married to the brother of her husband. Her sin certainly was adultery; but the language alike of John and of Josephus shows that it was also incest. The manner, therefore, in which this case is recorded in the New Testament, implies that the prohibitions of Moses were still considered as obligatory."

To a like effect is the testimony of the Rev. Mr Macrae of Hawick. In his work already referred to, he says:—

"The law of marriage, as well as all other laws, derive their true meaning and life from the personal life and doctrines of the Saviour. He first showed in His own life the subordination of power to humility and justice, and on this foundation reared the fabric of human love. Polygamy proceeded from the superior power of the man subjugating the woman,—a selfish power which subordinated her right and the true interests of the family to the blinder gratification of the man. But this was a power which, perhaps, could not be demonstrated to be essentially wrong, until He came who showed the proper subordination of power to justice and to love. Until He showed this in Himself, the law of marriage could not be properly understood; since this manifestation in Himself, and the whole system of Christian truth, required to be revealed before woman could take again her true place, the place which she occupied at first in Paradise, as the one sole helpmeet and equal of the man. His birth of a woman elevated woman to her true dignity and rank; and His whole teaching confirmed it. It is here, accordingly, that we learn the eternal law of marriage—the essential oneness and equality of man and woman—and it is here also that we learn the criminality of all the offences which destroy marriage and degrade woman,—the vices of fornication and adultery, and the enormities of polygamy and incest.

"I come now to the law of marriage as ruled in the Christian Church. Before the foundation of the Church

there is that remarkable case recorded in three of the Evangelists: the case of Herod, who married his brother Philip's wife. Some deny that Philip was at this time dead, and allege, in consequence, that the crime of Herod was adultery. But the contrary appears from Josephus,—'Herodias marries Herod (*i.e.*, Philip), the son of Herod the Great, and they had a daughter called Salome, *after whose birth* Herodias, being minded to break her country's laws, marries Herod, brother on the father's side to her husband, having parted from him while yet living' (Antiq., B. xviii. c. 5). Herodias could not plead the exceptional law of the Jewish state, which provided that the brother, or in failure of him the next of kin, should marry the childless widow, in order to secure the succession of his brother's family and inheritance. She had by Philip her daughter Salome, and so after divorce from him, or after his death, she could not lawfully marry his brother. Tertullian, an early authority, refers to this case, and assumes that Philip was dead when John rebuked Herod. 'John, rebuking Herod, because against the law he had married the wife of his *deceased* brother, he having a daughter by her, had been cast into prison, and afterwards slain by the same Herod' (Adv. Marc. iv. 34). St Mark says expressly that he had married her; so that the crime was not adultery, but incest; the violation, as Josephus says, 'of her country's laws,' *i.e.*, of those prohibitions which, with the single exception here recorded as a law of the Jewish state, were otherwise without limit, and, apart from the Jews, were, without exception, absolute and eternal. John the Baptist, therefore, the illustrious interpreter and defender of the moral law, fell a martyr to his indignant denunciation of the incestuousness of those marriages."

I might quote other authorities to the same effect; these, however, ought to suffice. They place the iniquity of marriage with a deceased brother's widow beyond the possibility of a doubt. They show it to be condemned by natural law, by Mosaic law, and by Gospel law—to be in itself a vice of the most hideous character—a crime of the

deepest dye. I shall now, therefore, content myself by pointing out and giving some of the special decisions and enactments which have been issued against it, and some of the special punishments which have been inflicted under it, upon transgressors by various nations, and at various periods in the world's history. Recollect that every decision and judgment previously given, in connection with marriage with a deceased wife's sister and other violations of the law of incest, is applicable with tenfold force to the crime of marriage with a deceased brother's wife, and then read the following:—

Maimonides, one of the best authorities as to the Jewish law, says "It was prohibited to marry a woman and her daughter, also the wife of a father, and the wife of a son; because these are the uncovering the nakedness of one body to the nakedness of the root and the branch. Brothers are to one another as the root and the branch: hence, because the sister has been prohibited, so also has been prohibited *the sister of the wife* and *the wife of the brother;* since this is the case of two individuals who are as root and branch in the conjunction of a third body."

The Targum of Jonathan Ben Uzziel has the following on Leviticus xviii. 16:—"Turpitudinem uxoris fratris tui non revelabis vivente fratre tuo, aut *post mortem* ejus si habeat filios: *nuditas fratris* tui est."—"The shame of thy brother's wife thou shalt not reveal during his life, or *after his death if he have children:* it is the nakedness of thy brother." It is clear from this passage that he held it unlawful, on account of the incestuous sin involved, to marry his brother's widow if she had had children to the deceased brother; because, if it had been for the reason pleaded in modern times for such marriages, a *widow* and *her* children had as much need of a *brother's* protection by marriage, as a *widower* and *his* children of a sister's—clearly showing also that the leviral law was limited to the peculiarity of raising up seed to his brother.

The Canons of Basil, who lived in the beginning of the fourth century, prohibited marriage with a deceased

brother's wife, and inflicted the penalty of exclusion from the communion of the church. The 23rd Canon says:—"Concerning those who marry two sisters, or those who marry two brothers, a letter has been sent forth, a copy of which we have sent to thy piety. But he who hath married the wife of his brother shall not be admitted to the communion till he shall have separated from her."

The second Canon of the Council of Neo-Cæsarea, A.D. 315, is as follows—"If a woman marry two brothers, let her be excommunicated till death. But at death, for humanity's sake, if she say that on being restored to health she will dissolve the marriage, she may be admitted to repentance. But if the woman die while such a marriage exists, or the man, admission to repentance to the survivor is difficult."

The law of Constantius, passed about the year 355, says:—"Although the ancients believed that it was allowable, the marriage of a brother being dissolved, that his brother should marry his wife, and that it was also lawful, after the decease of a woman, to contract marriage with the sister of the same, let all abstain from marriages of this sort, nor suppose that the children procreated of such unions can be legitimate; for it is proper that those who may be thus born be spurious."

Godfrey, in his notes, understands by the word "ancients," Jews—referring to the permission of the leviral law, in Deut. xxv. 5, and Ruth iv. 4, and to the Egyptians, as well as ancient Romans. He has the following commentary:—"The same woman is forbidden to marry two brothers in succession, and the same man two sisters; or (which is the same thing), a brother to marry the wife of his brother, and the same to marry the sister of his wife, by the Emperor Constantius, by his law, A.D. 355, equally as by the law of Theod. the Great, Fratris 5 cod. eod. tit. De Incestis Nuptiis; by Arcadius, l. 3, h. 1; by Theodosius the Younger, l. ult. h. t.; by Zeno, l. pen. cod. eod.; and by Anastasius, l. ult. cod. eod.; and thus there are extant altogether six constitutions concerning the matter and its

prohibitions." He then gives a profusion of facts and illustrations and proofs, and refers to the Christian Canons already quoted.

The Waldensian, one of the oldest Christian Churches, says, according to the authority of the Rev. Dr Revel:—"*Marriages between brothers-in-law and sisters-in-law, uncles and nieces, aunts and nephews, and between relations at one degree more near, are forbidden.* I find this same prohibition in the Acts of the Synods of 1833, 1828, 1801, and 1798. Our civil law does not permit alliances between a brother-in-law and sister-in-law,—that is to say, between a widower and the sister of the deceased wife, *no more than between a widow and the brother of the dead husband.* It has sometimes happened that the king, by a *special decree*, has authorised such a union, and pastors have, *contrary to our discipline*, blessed it. Nevertheless, since the Constitution, the king's ministers reject on principle demands of this nature."

The first National Synod, held in Paris in 1559, declared as follows:—

"It is not lawful for any man to marry the sister of his deceased wife, for such marriages are prohibited not only by the laws of the land but by the Word of God. And although, by the law of *Moses*, it was ordained that, when the brother died without children, his brother should raise up seed unto him, yet that law, enacted for the children of Israel, was temporary, relating only to the preservation of the tribes of that people. But the marriage of the sister of a betrothed and deceased wife is of another nature, because that alliance was not contracted by a commixture of blood; therefore such a marriage may be admitted and approved. Yet, notwithstanding, all possible care shall be taken that neither the civil magistrate nor weak Christians be offended."

The same principle was affirmed at the Synods of Poictiers the following year, and of Lyons, of which Beza was a member, in 1563. The members had intimate intercourse with Calvin, who met at Geneva with the brethren "come from the Synod of Lyons." In chap. x. of the Synod of Vertueil, I find the following heading:—"Orders and *Decrees*

*concerning Marriage*, made by the authority of the National Synod of Vertueil, held in the year 1567, but drawn up at the desire of the fathers in this Synod by the R. Mr Calvin, minister of God's holy Word, pastor and professor in the Church and University of Geneva." Under the ninth decree, it is queried, "What are those cases of affinity which hinder marriage? Answer V.—Let no man marry his brother's widow, nor any woman him who was her sister's husband." Calvin and Beza were at the framing of these Canons. The Discipline was read over and revised at every Synod. Various special cases were decided, and always on the doctrine of the Canon now quoted. In one of these they affirm that though they do not pronounce it forbidden by the Word of God, if the magistrate allow it, yet, "civility and decency" are opposed to a man's marrying the sister of the widow of his own deceased brother.

Calvin's own opinion is precisely this. In his Commentary on Lev. xviii. 16, on the words, "the nakedness of a brother's wife," he says, "There are bad interpreters who raise a controversy concerning this place, and explain that a spouse is not to be violently taken from the couch of a brother, that their marriage was unlawful while the husband lived. For it is not suitable to wrest to different senses things which in one place are declared in the very same words. God forbids to uncover the nakedness of the wife of a father, a father's brother, and of a son. When he employs the same phraseology in so many words concerning a brother's wife, it is absurd to feign different senses. Wherefore, if it is not lawful to marry the wife of a father, of a son, of a father's brother, or nephew, it is proper to think one and the same thing of a brother's wife, concerning which a perfectly similar law is enacted in one context and tenor." He then meets, in his own way, the supposed objection from the case of the leviral law so often referred to, and concludes his statement on Lev. xviii. 16 thus:—"I therefore hold it as indubitable, that by the law of Moses marriage is forbidden with the widow of a brother-german, being of opinion that the law of Deut. xxv. 5 related, not to

brothers-german, but more remote relatives, according to the usage of the word brother, as applied in Hebrews to *all* blood relations." On Lev. xviii. 18—*Mulierem quoque cum sorore—a woman with her sister*—he says, "Some perverse men, trusting to this text, wish to allow that if any one be deprived of his wife, he may marry her sister-german, because the restriction is added, that he may not take another, the former being alive; whence they conclude that it is not prohibited that she succeed to the place of the dead wife. But it was necessary to draw the design of the legislator from his express words; because not only is there mention of incest or shame, but of the jealousy and quarrels which thence arise. If it were only said, 'Thou shalt not uncover the nakedness,' not without some colour of reason might they put forth that the husband in widowhood was free to marry the other; but when a different end of the law is expressed, that she who married in good faith be not vexed with quarrels and contentions, it is certain that the license of polygamy was bridled by this exception, that the Israelites, *content with one injustice*, should at least not commit two sisters to hostile contention. Now, the condition of the first wife was too hard when she was compelled to bear a rival and a concubine, but constantly to quarrel with a blood relative was less tolerable. Wherefore the word sister is not restricted only to sisters-german, but I think that our near relatives are comprehended, of whom otherwise the marriage were not incestuous. In fine, it is not incest so much as the cruelty of the husband which is condemned, if he wishes to marry over and above the relation of his wife. Nor can we resolve otherwise from the words of Moses; for if the nakedness of a brother is uncovered when a brother marries his widow, not less is the nakedness of a sister uncovered when the other sister marries her husband after widowhood."

Poole, the author of the five folio volume "Synopsis Criticorum," in his Annotations on Leviticus xviii. 16, "Thou shalt not uncover the nakedness of thy brother's wife," says, "Neither in his lifetime nor after his death; and therefore

a woman might not marry her husband's brother, nor might a man marry his wife's sister, either before or after his wife's death; *for so all the prohibitions are to be understood.*"

Without multiplying authorities, I give one from the Annotations of the Westminster Assembly. On Lev. xviii. 16, "*Brother's wife,*" they have the following Note:—"Neither while he is alive nor when he is dead, except in an especial case, and upon an especial warrant."—Deut. xxv. 5. On ver. 18, "*To her sister,*" they say—"This is to be understood not only of another natural sister, as if a man might have two wives, so they were not such sisters; or two sisters, one after another, to wife—the latter upon the death of the former; for the marriage of the brother's wife is forbidden before (ver. 16); and, by consequence, a woman must not marry her sister's husband; and so two sisters are already forbidden to be married to one man—(ver. 16.) Wherefore it is most probable that this is a prohibition of polygamy—that is, *of having more wives than one at once;* and the reason showeth it, that the one may not be a vexation to the other, which is likely to fall out, not only betwixt natural sisters, as Rachel and Leah (Gen. xxxi. 1, 14), but betwixt those that are not of kin, as betwixt Hannah and Peninnah (1 Sam. i. 6); and for the word sister, in a general acceptation, it may be applied to any woman, as the word *brother* to any man (Gen. xix. 7); and it is to be noted that it is sometimes applied to things, which, in propriety of speech, come not under such a title or denomination—as the wings of the beast (Ezek. i. 9) are said to touch *a woman to her sister,* as the Hebrew phrase carryeth it."

The Reformed Dutch Synod, at their meeting in Dortrecht, held in 1618 and 1619, gave the subjoined interpretations of Leviticus xviii. 16:—"From this law it necessarily follows that a woman who has been married with one brother, may not, after his death, marry with another brother; and upon the same principle, a man who has been married to one sister, may not, after her death, marry the other sister." On verse 18, they also say:—"It consequently can by no means from this be concluded that

the husband, *after the death* of his wife, may marry her sister." Towards the conclusion of a dissertation on "Unlawful Marriages," the venerable and profoundly-learned professor, Dr Janeway of America, declares emphatically that "The REFORMED CHURCH IN HOLLAND has established by her Canons, 'That no man may marry his sister-in-law, and no woman may marry her brother-in-law,' and has never deviated from this rule."

The Reformed Dutch Church in America, which is the same with the Church in Holland, has adopted the same Canons, corresponds with that Church, and is bound by the most sacred obligations to transmit unimpaired to posterity the precious treasure with which she is entrusted.

In confirmation of this, I quote from Broüwer, a learned jurisconsult. In his 15th chapter, "De nuptis ob affinitatem prohibitis summaria," he gives, as the heading of his 5th section, the following:—"The widow of my brother I cannot marry." In illustrating this section he states the view of Calvin, that "brother, in Deut. xxv. 5, 6, 7, is not the brother-german," that means "blood relations of a remoter degree." So strong is the view he takes of the prohibitions—Lev. xviii. 16, and xx. 21—that he cannot think Deut. xxv. 5–7 even an exception. He shows that there were many cases in which the brother was not held bound to marry the widow of his brother, referring to Selden and Buxtorf for their enumeration, and then sums up thus:—"What then? Was marriage with a widow of a deceased brother lawful? By no means. For the Lord expressly forbade it, under pain of extermination; and this special exception to the contrary confirms the rule. Thus, among the commands prohibitory of certain marriages, He hath placed the general law of not marrying a brother's widow; that other special law He hath put in another place, and as a special exception from the general rule, that He might indicate that the first precept bound all: that what was singular it pleased Him to put in another. Therefore, no man is to imitate it without the express will of God; that which, without that will, is found forbidden to every

human being. What then? Shall it be said that that is contrary to natural reason which sometimes hath pleased God. Be it so; but as we have said, what human reasoning concludes to be abominable and indecent, that, by the will of God, may sometimes become decent and just. God, the Author and Lord of nature, whose will is superior to all human reasoning, hath fixed the law to US, *not to* HIMSELF. What He orders is just. But we must not follow what, in a certain case, His secret counsel hath sometimes approved, as often as the general law enacted by Him is to the contrary; but rather His command, which is above all laws, and the act, at whose deep secret reasons our curiosity cannot perfectly reach." His 6th head is thus stated:—"A sister-in-law, that is, the sister of my deceased wife, I cannot marry." This latter, his 6th head, he illustrates thus:—"As it is not allowed to marry the brother's wife, so neither is it allowed to marry the sister of a deceased wife, whom we call the *pro-soror*, or sister-in-law. The general rule is, that, by Divine right, the marriages of all related by affinity are prohibited, if the marriages of those blood relations whom they represent are forbidden."

"It is true," he goes on to say, "that God has expressly prohibited the marriage of a brother with a brother's wife, but not of a sister-in-law with the widower of her sister. But, by parity of reason, He hath left place for arguing from what is expressed to what is not expressed; so that, since the marriages of the brother-in-law and the brother's widow are interdicted, also the marriages of these are, for the same reason, said to be forbidden by the sense of the Divine law."

Hume, writing of Henry VIII.'s marriage to Catherine, says:—"The marrying of a brother's widow *was so unusual, that no other instance of it could be found in any history or record of any Christian nation;* and though the Popes were accustomed to dispense with more essential precepts of morality, and even permitted marriages within other prohibited degrees, such as those of uncle and niece, the

imaginations of men were not yet reconciled to this particular exercise of his authority."

The University of Bononia, on the same subject, declared itself thus strongly:—"We confidently do hold and witness, that such marriage is horrible, accursed, and to be cried out upon, and utterly abominable, not only for a Christian man, but for an infidel, unfaithful, or heathen, and that it is prohibited, under grievous pains and punishments, by the law of God, of nature, and of man; and that the Pope, though he may do much, unto whom Christ gave the keys of the kingdom of heaven, hath no power to give a dispensation to any man to contract such marriage. In witness whereof we confirm this our judgment, both under the seal of our University, as also with the seal of our College of Doctors of Divinity, and have subscribed it in the cathedral church of Bonony, the tenth day of June, in the year of our Lord 1530."

The 99th Canon of the Church of England, adopted in 1603, is on the same subject as follows:—"No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the years of our Lord God 1563; and all marriages so made and contracted shall be judged incestuous and unlawful, and consequently shall be dissolved as void from the beginning; the parties so married shall, by course of time, be separated, and the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish." The table referred to is that known as Parker's Table, which contains these—"Wife's Sister, Husband's Brother; Brother's Wife, Sister's Husband."

Professor Gibson, founding on an argument by Mr Dwight, an able American writer, from whom I have already quoted, thus clinches the argument founded on Leviticus xviii. 16, and Leviticus xx. 21. "There can be no question that those passages expressly forbid marriage between a husband's brother and a brother's wife or widow. If it were not the widow, it is forbidden in the case of every other man, as well as of a brother, and this prohibition

were unnecessary, absurd, and even mischievous. It would have been enough to say, thou shalt not take another man's wife. But the guilt in this case lies in the 'nearness of kin'—in its being the 'brother's nakedness'—he and his wife being *one flesh*. And as the simple crime of adultery was forbidden in the seventh commandment, and could be committed by one of the parties in relation to one another only during the life-time of both, the sin here spoken of relates to a different crime, and is forbidden when one of them is dead. But the relationship between a wife's sister and a sister's husband is one and the same, and, therefore, the woman may not marry the husband of her deceased sister, nor the husband marry her. By the prohibition in question, a man may not marry his brother's wife; it follows, then, by unavoidable consequence, that a woman may not marry her husband's brother. If the man may not marry the widow, the woman may not marry the widower. Now, by this law, a woman cannot marry her husband's brother. But a husband's brother and a wife's sister are the very same in the degree of relationship; in other words, are morally bound by the same law. The law, therefore, which forbids a woman marrying her husband's brother, equally forbids a man marrying his wife's sister. There is no avoiding this conclusion, but by denying the most ordinary principles of morals, as applicable alike both to man and to woman. One would think that nothing can be clearer than this, that a law which prohibits a man, any man, married or unmarried, to marry his brother's wife or widow, must prohibit a woman, any woman, whether she have ever been married or not, from marrying her sister's husband or widower; and so, of course, the husband of a deceased wife cannot marry her sister."

Henry and Scott, two of our ablest commentators, are to the same effect.

Henry, on Lev. xviii., while holding it to prohibit incestuous marriages, says—"Marriage is a divine institution; that and the Sabbath, the eldest of all others, of equal

standing with man upon the earth." . . . "These prohibitions (in Lev. xviii.), besides their being enacted by an incontestable authority, are in themselves highly reasonable and equitable." He says again—"The relations forbidden are most of them plainly described; and it is generally laid down as a rule, *that what relations of a man's own he is bound up from marrying with, the same relations of his wife he is likewise forbidden to marry with, for they two are one.* The law which forbids marrying a brother's wife, verse 16, had an exception peculiar to the Jewish state, that if a man died without issue his brother or next of kin should marry the widow, and raise up seed to the deceased, Deut. xxv. 5, for reasons which held good only in that commonwealth; and therefore, now that those reasons have ceased, the exception ceases, and the law is in force that a man may in no case marry his brother's widow."

The opinion of Scott is more full and decided. "They"—the laws in Lev. xviii. 6–17—"are therefore to be considered either as moral in themselves, or so nearly connected with other moral obligations, as to be proper to be observed by all mankind; and, in general, the wiser heathens have deemed such marriages unlawful, and abstained from them. It is elsewhere enjoined, that if a man died without issue, his surviving brother should marry his widow (*Note*—Deut. xxv. 5–10). But as this appointment respected special purposes under the Mosaic dispensation, the prohibition of marrying a brother's wife *is absolute to us; and, by parity of reason, that of a woman marrying the husband of her deceased sister.*" "Severe laws," he adds, "on this subject seem essentially necessary, and have always been judged to be so by legislators, heathen as well as Christian. Yet if these laws are not obligatory under the Christian dispensation, there is no law of God in force regulating marriages, nor any restricting the intermarriages of the nearest relations. Did the Lord, then, intend to leave his Church under the New Testament wholly *without law* in this most important concern? or hath he confirmed his own pre-existing law as of moral obligation? St Paul's language concerning the

incestuous Corinthians, 'Such fornication (uncleanness) as is not named among the Gentiles, that one should have his father's wife' (1 Cor. v. 1), implies that Christians had a rule in this respect, and a stricter rule than the Gentiles; yet that rule can be found only in this chapter. . . . I must therefore consider these laws as in equal force at this day among Christians as they were formerly in Israel; those implied by parity of reason, as well as those more expressly mentioned, according to the regulation of our ecclesiastical law." He then gives the ordinary view as to Lev. xviii. 18, as a connivance at polygamy, with the exception of such a case as Jacob marrying Rachel and Leah, and winds it up thus—"As a woman might not in ordinary cases marry the brother of her deceased husband, it can hardly be supposed that it was allowable for a man to marry the sister of his wife, even after her decease, *though this verse seems not to contain a prohibition of it.*"

That marriage with a deceased brother's widow was deemed deserving of no light punishment, we learn from the doom pronounced on "Coniah the son of Jehoiakim king of Judah," when driven into captivity, as the "earth" is thrice called to listen to it, Jer. xxii. 30—"Thus saith the LORD, Write ye this man childless, a man that shall not prosper in his days; for no man of his seed shall prosper, sitting on the throne of David, and ruling any more in Judah."

James Ferguson, Esq., lately one of the Judges of the Consistorial Court of Edinburgh, in his Work on "Consistorial Law in Scotland," says:—"By the 18th chapter of Leviticus, ver. 12 and 13, the intermarriage of nephew with aunt is prohibited. *From parity of reason*, our law has extended this prohibition to the intermarriage of uncle with niece; and the criminal courts have punished the violation of the rule capitally, as incest (case of Strange, 24th April 1649; of Johnston, 8th June 1705). The application of this rule to intermarriage by either spouse in widowhood with the relatives of the deceased, whether by consanguinity or affinity, within the prohibited degrees as thus interpreted, has likewise in various cases been capitally punished as

incest by our criminal tribunals (case of Tannahill, 2nd March 1725; of Gourlay, 5th July 1626; of Blair, 7th September 1630.—*Report, Second Division*—see title). Nevertheless, a question is understood to have been agitated in private consultations, *which was lately brought to trial* in the Consistory Court, whether it was not lawful for a husband, on the decease of his wife, to marry her sister, either of full or half-blood, or *vice versa* for a widow to marry the brother of her late husband. From the foregoing quotation it must, however, be evident that such marriages as are prohibited *must likewise be set aside ab initio*, if a regular action of nullity or of divorce shall be instituted during the lives of any of the spouses. Accordingly, in this shape the Commissioners have given that judgment upon the question, and this decree has been carried into effect without being subject to review."

The Act James VI., par. 1, chap. xiv., makes living or marriage with a brother's wife or widow punishable by death. It reads thus :—

"Forsameikle as the abhominable, vile, and filthie lust of Incest, is sa abhominable in the presence of God, and that the samin Eternal God, be his express word, hes condemned the samin, and zit neverthelesse the said vice is sa used within this Realme, and the Word of God is in sik sort contemned be the users thereof, that God be his just judgements hes occasioun to plague the Realme where the said vice is committed, without God of his mercie be mair gracious, and remeid be provided, that the said vice cease in time cumming. THEREFOIR our Soveraine Lord, with advise and consent of my Lord Regent and the three Estaites of this present Parliament, statutes and ordaines, that quhatsumever person or persones that committis the said abhominable cryme of Incest, That is to say, quhatsumever person or persons they be that abuses their bodies with sik persons in degrie, as God in hes word hes expreslie forbidden, in ony tyme cumming, as is contained in the xviij. chapter of *Leviticus*, sall be punished to the death."

That this law was not a dead letter, nor intended to be,

is manifest from the fact that, in September 1624, Jeffrey Irvine suffered the extreme penalty of the law in Edinburgh for incest with his brother's widow. He had begotten four children by her, and when his case was libelled, no plea in extenuation of his guilt would be accepted. The law is still unrepealed; it remains on the statute-book as a terror to evil doers; nevertheless so little deterrent is it, or so lax is the moral feeling, that it is notoriously well known that persons are living in religious Scotland, aye, and in Edinburgh, too, before the full view of Her Majesty's criminal prosecutors, in open violation of the law, and apparently utterly regardless of its consequences. It may well be asked, by all who respect social order, and who desire to see the foundations of morality preserved,—"Can such things be, and overcome us, like a summer cloud, without our special wonder?"

It is worth while mentioning, as a fact, that the society which was promoted to advocate the marriage with a deceased wife's sister, are decidedly opposed to the marriage with a deceased brother's wife; and all their authorities hold it to be incestuous in the case of marriage with a deceased brother's wife.

So far, I think, I have made the facts and arguments complete and conclusive that it is incestuous for a man to marry or live with his brother's wife or widow,—a crime against nature, against society, and against God. Let me now consider what might be expected to be the state of nations if such an iniquity were suffered to spread or to go unpunished.

## CHAPTER VIII.

### PERNICIOUS EFFECTS ON SOCIETY.

IT is scarcely necessary to say that, if man is to be a law to himself, there will soon be an end to all civil and moral law. If man is to cohabit with or marry whomsoever he chooses,—relations by blood, relations by affinity, or relations which, though only of the latter, are as nearly as possible relations by blood,—then clearly society cannot hold together: social bonds must be broken, natural feelings must be stifled, the most sacred relationships of life must be sundered, the civil codes of ages must be treated as "old almanacs," the law of God itself must be deemed and taken to be as of no account. Let the British public, looking at and studying what presents itself to them every day in the incestuous connections which are being formed, apparently without let or hindrance, consider what the effect of them would be, were they as general as many would wish, or as universal as some would desire. It seems as if some men would gratify their lust at the expense of every law of nature and of God,—aye, without even a regard to that which is sometimes more powerful than either with them, a sense of public propriety or of common decency. There is no use in saying that they find something somewhere apparently to justify or excuse them. They defend, or attempt to defend their enormities in a variety of ways. If they do not openly discard the Scriptures altogether, they are ready to contend that the incest prohibited in them is merely incestuous fornication or adultery, and thus no marriage can be incestuous; or that consanguinity is the sole scriptural ground of incest, and that it cannot exist in any case of affinity; or that the levitical prohibitions were intended merely to preserve the natural supremacy of the husband; or that the levitical law prohibits marriage with certain women while they are the wives of other men, but not

after they become widows; or that the law of incest was either merely ceremonial or merely the natural law of Israel, and in neither case binding on us; or that incest is merely a positive offence, and therefore not a crime in its own nature; or that we are subject to no law of incest whatever, all marriages being lawful. These and other such arguments, if they can be so called, are being constantly thrown in the teeth of the friends of morality and religion. I think I have shewn that, however frequently or persistently they may be stated, they are utterly without foundation,—that the law of God stands firm and sure, however it may be opposed or be sought to be trampled under foot; and that if men will transgress it, and by transgressing it bring themselves to the level or lower than the brutes that perish, on their own heads, and on the heads of society which suffers them, must rest the blame. Society, however, is bound to protect and defend itself as much against the violations of marriage laws as against the violation of laws designed to guard life and to conserve property. It will not do for legislators or others to say or insinuate that because the degrees in marriage, prohibited by nature, by revelation, and by express judicial declaration, are every day being set at nought by certain orders of society, therefore they must either wink at them or legalize them. It might as well be said and argued that because robberies are frequent and murders not uncommon, and that there are those who are able to persuade themselves that they are justified in committing one or the other, or both, that the nation is not to punish the robber or the murderer, or rather that it is bound in the interests of morality to protect and defend both. No man in his senses would hold the latter of these justifiable, and for the same reason no man in his senses should hold the former justifiable. Let it be admitted as a principle that because a vice or crime is common, and that there are individuals, chiefly in the higher ranks of society, who believe it to be right, or will not acknowledge that it is wrong,—let it be admitted, I say, that because a feeling or passion of this sort is prevalent, the legislature is to set

aside all its own enactments in its favour, and to refuse to exercise the strong arm of the law in defence of its own solemn statutes and tribunals, then farewell to everything like social amenity, moral feeling, or national good order. The foundations being destroyed, the entire superstructure disappears, and it will be with us as it was with the Jews in the time of their deepest humiliation and disgrace—every man will do that, neither less nor more, than seems right in his own eyes. I might enlarge to any extent on this topic, which is sufficiently suggestive in itself not to need elaborate argument; I find, however, so much said about it, and said so appropriately and forcibly in the work of Dr Lindsay, from which I have before quoted, that I again extract freely from his pages. On the duty of all who profess to be Christians to obey the law of the land, he says:—

"Every man is bound to submit to the laws of his country, and a Christian is doubly bound. He is bound by the same obligation which rests upon others, and he is bound by the additional obligation of Christ's command. Nor is he to render obedience only for wrath's sake, but also for conscience' sake; not simply that he may avoid penalties, but mainly that he may discharge a duty enforced by Divine authority. It is not simply a crime to violate the civil law, but it is a sin against God; and it is a sin, not merely in so far as the particular act may be condemned in Scripture, as in the case of murder and robbery, but it is a sin also on the simple ground of being a violation of public law, and that for the plain reason that God has commanded submission to the powers that be. The thing required by civil rulers may be in itself a matter of indifference, neither commanded in Scripture nor forbidden, as is the case with ten thousand regulations upon the statute-book, but it is not a matter of indifference whether we observe them or not, when commanded by lawful authority.

"Some seem to think that they may violate a civil law

if they consider it unjust, if they think that it does them a wrong, if they suppose that it unduly restricts their freedom. But this is an egregious mistake. These may be good reasons for endeavouring to procure the repeal of an obnoxious law, but they are no reason at all for transgressing it. Never was there a law enacted in any age or country, no, not in the freest nation upon the face of the earth, which was not considered by numbers of individuals to be wrong; and if every man were justified in disobeying a civil statute when he conceived it to be unjust or uncalled for, this would be equivalent to saying that every man was bound to obey only those laws of which he approved. In short, the bonds of society would be dissevered, and each individual would do just what seemed right in his own eyes. In all cases, when charged with transgression, it would be a sufficient defence to say that we considered the law wrong. The law may be wrong, nay, it may do us a real injustice, but submission is our duty, and that not merely for wrath, but also for conscience' sake. When we are suffering under the operation of an unjust law, we are suffering, if our submission be grounded upon Christian principles, for righteousness' sake, and we shall not lose our reward. By all means procure the abrogation of an unjust law if you can, but obey it while it is law, unless the crisis be one of those great eras which occur at rare periods, when the community as with one soul feels itself summoned to revolutionize society. A whole nation, in cases of irremediable tyranny, where under colour of law the most grinding oppression is exercised upon all ranks, may by force resist and overthrow its government when it is felt that there is no remedy short of this extreme and perilous expedient. But an individual is never warranted to transgress any law of his country unless he is prepared to say that obedience to that law would place him in a position of rebellion against God."

Looking at the condition and arguments of those who, in the matter of incestuous marriages, such as that with a

deceased brother's wife, transgress and encourage others to transgress the law of the land, he says, on the question of resisting human law:—

"Such resistance can only be defended on the plea of Scripture, where compliance would involve the individual in the commission of sin; but resistance is not a duty, nor is it at all consistent with Christian character, where compliance would merely prevent him from doing what, but for the law, he would have felt at liberty to do. Let us apply the principle of our opponents to some other cases. One man thinks that marriage with a wife's sister is not forbidden in the Word of God; and, therefore, he imagines that he is at liberty to transgress the law of the land. But another man is equally persuaded that marriage with his own niece, or his own aunt, is not forbidden in Scripture. Has not he the same right to transgress the civil law? Another man is convinced that marriage with a father's wife, when she becomes a widow, is not contrary to the law of God. Has not he also a right to disregard the British statute-book? Nay, there are not a few who are convinced that the whole chapter of Leviticus relating to this subject has fallen to the ground, and is not now any part of Christ's law at all. An individual, therefore, who on this ground thinks that marriage with his own sister is not forbidden under the Gospel (where is it forbidden?), has a right also to transgress the law of the land; and when he is brought before a magistrate, it is a sufficient defence for him to say, point out to me the chapter and verse of the New Testament where this connection is condemned. Where are you to stop? You can stop nowhere. Only let a man be thoroughly convinced in his own conscience that any connection which he thinks of entering into is not forbidden by the Word of God, and he has the very same right to transgress the law of the land as the man who marries his wife's sister. In short, you abolish the civil law altogether, and you make every man the judge in his own case. Nay, more, on the same principle you have no right to bring a Jew to trial for

committing bigamy whilst living under the protection of British law. The Jews, we are told, believe that Lev. xviii. 18, tolerates marriage with a wife's sister; but then, it should be remembered, they believe just as firmly that that same verse permits polygamy. Now the Old Testament in their view is the only Divine revelation in existence. No part of the old law do they consider as set aside by any subsequent revelation. They do not own Christ's authority. Polygamy, therefore, according to their religious standards, is as much permitted to them now as it was to their fathers of old. If the Christian, then, who thinks that his religion permits marriage with a wife's sister has reason to complain of the civil law against that connection as an encroachment upon his conscience, has not the Jew, who believes that his religion tolerates several wives at once, equal reason to complain of the civil law against bigamy as an infringement of his religious rights? And if the Christian is warranted on this ground to transgress the one of these British statutes, is not the Jew equally warranted to transgress the other? The very same plea of conscience that suffices for the Christian when he marries his wife's sister, equally exonerates the Jew from all blame when he marries two wives at once. It is to no purpose to say that the Jews do not in general now practise polygamy, and that there are regulations among them favourable to monogamy. These regulations are not conceived by themselves to be of Divine authority. They take rank with the laws and regulations and confessions of faith existing in our churches. And if a Christian may say, I set aside your confessions of faith on the one hand, and your British law on the other, and I take my stand upon the simple Word of God, I marry my wife's sister; equally may the Jew say, I set aside the traditions of the elders, and the glosses of Rabbis, and the enactments of Parliament, and taking my stand upon the law of Moses, the only Divine authority on the subject, I marry as many wives as I please. Undeniably the Jew's plea of conscience is just as valid as the Christian's, and he is as really a persecuted

man when the penalties of the law of bigamy are inflicted upon him. The fact, however, is that in neither case is the plea of conscience worth a straw. The Jew residing on British ground cannot say, your law against bigamy compels me to do a sinful thing. He can only say, it restrains me from doing what but for it I should have felt at liberty to do; and therefore he is bound, as before his God, to obey the laws of the country whose protection he enjoys, and to content himself with one wife at a time. So also the Christian cannot say that the civil law forbidding the marriage of two sisters in succession obliges him to incur guilt in any shape whatever; and therefore he is bound, as he shall answer to God, to obey the law of his country, and he has no right to complain of the disabilities, such as the bastardy of his children, and their consequent liability to the loss of property, which ensue upon his transgression. For any man to say that he, a British subject, will on grounds of conscience marry his wife's sister, because he does not consider that Scripture condemns the connection, is a palpable absurdity. His conscience should teach him that he is bound as a Christian to obey every civil law, when obedience to it does not necessarily lead him into the commission of sin."

That not a shred of excuse may be left to those who in this, as in other matters, would have both freedom of thought and license of action, I cannot help giving another valuable extract. Taking up the argument most commonly adopted, that the civil law on the subject of marriage ought not to include more prohibitions than are contained in Scripture, he thus writes:—

"Some fix the limit of scriptural allowance at one point, and some fix it at another. It is absolutely impossible, therefore, for Parliament to enact any law which all parties shall acknowledge to be perfectly coincident with scriptural law. The thing is beyond human power. An angel could not do it. It is an utter and absolute impossibility. Mould the civil law as you please, you can never make it, in the estimation of all Christians, exactly accordant with

Scripture. If you carry your prohibitions only up to a certain point, many will say your civil law tolerates connections which are condemned in the Bible. If, on the other hand, you include more prohibitions, then others will say your civil law forbids connections which God has left free. It is a manifest and undeniable impossibility to make the civil law agree with the scriptural law in the estimation of all Christians. Here, therefore, a question presents itself, seeing the civil law cannot be moulded in accordance with the views of all, whether is it better that it should embrace more prohibitions than some persons consider necessary, or fewer than others conceive to be required by the Word of God? One or other of these things it must do, and the true practical view of the subject for a Christian statesman to take is, which of these courses would be attended with least evil? which of them would do least violence to the conscientious convictions of men? Now, we do not see how there can be a moment's doubt about this point. A law embracing more prohibitions than some persons think needful will violate no conscience, it will lead no man into the commission of sin, it will only restrict liberty of choice to a small extent. But, on the other hand, a law tolerating connections which multitudes regard as forbidden in Scripture, will be productive of immense mischief. It will introduce disorder and confusion into society. It will stir up strife and hostility in families. Friends will see their friends living in what they consider to be incest, and children will be born who will be looked upon by many as the fruit of incest. Much uneasiness of conscience also will be engendered, for young individuals taking the liberty which the civil law allows without having considered the scriptural aspect of the question at all, may afterwards become persuaded that the opinion of their friends, as to the incestuousness of the connection into which they have entered, was correct; and a source of bitter disquietude may thus be opened up within them to torment them all their days. Undeniably, it is impossible for the law of the land to be thrown into shape which all shall recognize as

perfectly accordant with Scripture. Make the law what you please, it must always deviate in the view of some from the standard of the Bible, either in the way of including too many or too few prohibitions. And the evil without a doubt in the one case is immeasurably smaller than in the other. In the one case, it can only be said that the liberty of certain persons is restricted more than they think needful, but in the other, a public sanction is given to marriages which multitudes regard as incestuous, and the whole machine of government becomes polluted in their eyes. And this view of the subject becomes far more striking, when we pass from a consideration of the bearing of the civil law upon individuals, to its bearing upon Christian churches. These are communities which have a separate and independent government of their own, based not upon the civil law, but upon the Holy Scriptures. Now, conceive the law of the land to embrace fewer prohibitions of marriages than the churches consider to be required by the Word of God, and is it not obvious that this would originate a most distressing state of matters? For multitudes would have entered into matrimonial unions during the days of their religious indifference, which, when they became Christians, they would find to be opposed to the Word of God, and all the relations of life would thus be thrown into confusion and disorder. There would be no difficulty in the case of those who were reared in Christian families, for they would both obey the law of the land in abstaining from all those connections which it forbade, and over and above this, they would also as Christians abstain from those additional connections which the Bible prohibited. But there would be extreme difficulty and hardship in the case of persons who had gone all the length which the civil law permitted, before they were brought under serious impressions. Yet, what could the church do? They could not admit into communion persons whom they believed to be living in incest. A civil law embracing fewer prohibitions than the church considered to be indispensable, would be an evil of a most serious and perplex-

ing character. But, on the other hand, a civil law embracing more prohibited degrees than the church considered to be specified in Scripture, would be an evil of a comparatively trifling kind. In this case, it would be the plain duty of the church, first, to require the observance of all those prohibitions which were common to the civil and the Christian law; and then, further, to require also the observance of those additional prohibitions which were embodied in the civil law, on the ground already stated, that it is the duty of a Christian man to obey every law of his country which does not oblige him either to do a positively sinful thing, or to refrain from doing something which is expressly enjoined as a duty."

More than this, which might easily be given, would justly be regarded as superfluous—mere words. On the assumption, therefore, that it is enough for every educated, and especially for every Christian mind, I proceed to show that the fears so generally entertained of an overthrow of our social and moral foundations by a relaxation of our laws on marriage are not merely imaginary or without foundation, but that they are based on a knowledge of the tendencies of corrupt human nature, and on actual facts gathered from the experience of nations who have set light by the authority of God, and allowed themselves to be drifted or forced into dangerous concessions to the pride and passion of man.

Mr Macrae, in his work to which I have already alluded, takes up the queries of the incredulous, and replies to them thus:—

"Many continue with great blindness and equal boldness to ask, What are the dreaded evils? They belong to that large class who acknowledge no evil but what they can see visibly, like an eruption upon the skin. I say to such—Study and inquire. If they do so, they will find that no Divine law can be violated without accumulated misery, and that the violation here is no exception. They will find numerous instances in this country of the evils of incestuous agitation, in tending to sever the close and familiar ties

which ought to keep in loving amity those who by marriage are near of kin to each other. They will find it much more in a country where a woman may marry her husband's brother, and the uncle may unite himself to his niece. They will find enough in the practice of those countries to convince them that the license clamoured for is the fertile disruptor of home and kindred. They will find nieces by blood and wife's sisters in large numbers, who, from the state of the law and relaxed practice, are shut out from the kindly shelter of their kindred's house. They will find it in union with increasing divorce, in a lower estimation of woman, of the duties to children and to home. On these points they will find melancholy proofs in abundance."

On the same subject, a clergyman of the United States thus writes to Vice-Chancellor Sir William Page Wood:— "Since such increased nearness of connexion has been deemed not improper and even desirable, there has grown up in families a perceptible and painful constraint,—the children learning to look with apprehension on their mother's sisters, and the wives becoming jealous of their influence with their husbands; while familiarities which formerly were thought to be, and really were innocent, have come to possess a consciousness of evil tendency which itself is of the nature of sin." After giving an instance, he says, "In another instance I knew of an excellent sister-in-law who had been living with and watching over her sister's children until the death of their mother, but who, on that mother's death, would not remain another night in the widower's house, though he was left with children too young for him to take care of, and to whom she had become warmly attached, as they to her. Indeed," he goes on to say, "the public mind of our entire country seems to me to be alarmingly unsettled on the whole subject of marriage; the laws and usages in the different States being exceedingly diverse as to alike the formation and dissolution of the tie. In many of the States divorces and re-marriages are shamelessly common, and for most trivial causes and

even pretences; and not a meeting takes place of Legislature or Court without numerous divorces being granted. Men meet in society sometimes with several women who have been successively their wives; and a story is told, I believe truly, of four couples in the same dance, each of whom, by regular process of law, had exchanged wife or husband with one of the others, so that each man saw before him two women of whom one had been, as the other was then, his wife."

Professor Gibson, on the effects actual or probable of legalising incestuous marriages, has the following remarks:—

"There is another aspect in which the effects of legalising the marriages in question may be viewed, viz., as actual or probable, on social morality and domestic peace, happiness, and safety. It is a well-known fact, exhibited in many frightful instances in the Bible, recognised even as a principle of law in modern times, verified in the history of mankind, and awfully demonstrated in the records of criminal courts, that cruelty and lust, impurity and bloodshed, are fearfully allied. Every thing that tends to break down the just and reasonable barriers which God has raised to restrain the gratification of impure passions, is not only a restraint and check upon impurity, but upon cruelty and violence. Every one who can read and observe, knows what multitudes of murders and acts of violence are the fruit of impure passions, and the danger, consequently, of diminishing the horror of their indulgence. To go no farther, look at the cases of Rush and the Mannings in England, Kirwan in Ireland, and Pritchard in Scotland. One, among many others, of the wise, and holy, and beneficent ends of the prohibitions of marriage within certain degrees, is to extend, as many writers, both Jewish and Christian, have well observed, the blessings of family friendships and alliances. The delightful enjoyment of paternal and fraternal intercourse reproduced, and descending and extended in the relations of uncles and nieces, aunts and nephews, brothers and sisters-in-law, is one of the greatest

elements of human happiness. Let the present law be altered, and one or other or both of two things will inevitably happen, to an extent we little dream of at present. Either this intercourse will instantly be chilled by the necessity and propriety of the caution and reserve that do, and which all men, especially *parents*, feel ought to, regulate the intercourse of the sexes in well-ordered and virtuous societies. Or, from the very familiarity of intercourse and strength of endearment which such relations imply, those crimes which are of too frequent occurrence already, where such facilities are afforded, if once they lose the character of incest, will become frightfully common. Jealousies on the one hand, and intrigues and seductions on the other, will follow in their train."

Still further referring to the Continent, he says:—

"I have no manner of doubt that the frightful licentiousness prevalent in the various states of the Continent may be traced, in great measure, to the prevalence of infidel, pantheistical views of morality—views which confound all distinctions of human kind—nay, virtually confound the distinctions even between man and beast. Let them progress, and I say again there is nothing to prevent the atrocious brutalities of heathenism described in Rom. i. to be renewed openly on the face of the earth, and 'before the sun.' I wonder that the Libertarians are not ashamed to quote in their favour the example of such a state of things as prevails in Prussia, with the facts already stated, especially in the speech of the Bishop of Exeter in the House of Lords, and hitherto uncontradicted—that in Prussia, with a population inferior to that of England and Wales, exclusive of Scotland, they had, in three years, no less than 7800 divorces; that is, no less than 2600 in each year. The actual cases of crime must have been vastly more numerous than those thus proved and known. Many of these must have been cases of infidelity in the parties to one another, and doubtless directly traceable to this relaxation of the law, and consequently of the tone of public feeling, in regard to the marriages now under discussion. Well might the Bishop of Exeter ask their

Lordships in the House of Peers, as he did after stating these facts, 'Now, what would they say if the same thing took place in England? Were they prepared to adopt that state of things? And they must be prepared to adopt it, if they sanctioned the bill which was then before the House; for they must not suppose that they would be able to stop when the bill stopped,' Lord Campbell pronounced the bishop's speech to be 'unanswerable,' and demonstrated the falsehood of the assertion that the marriages in question had been lawful before the passing of Lord Lyndhurst's Act in 1835. Lord Campbell delivered opinions of great solemnity and weight against such marriages. He denounced the agitation on the subject, begun and carried on by 'those who had violated the law,' and purely 'for personal interest,' and who, in order to obtain the support of numbers, persuaded persons to violate the law by denying its existence."

He goes on to add, as a case exactly to my purpose:—

"A case of a woman marrying her husband's brother was lately brought before the Church Courts of one of the Presbyterian bodies of Scotland, with a boldness of which, if it had been, or may yet prove, successful, no one can tell the mischievous consequences. But society marked it so strongly, that I have been told the parties were shunned in the ordinary dealings of business. Let the *law* be altered, and, considering the corruption of humanity, the *case* would no doubt be altered also."

A still worse case of a man living with his brother's widow has come under my own notice, without anything being done by Church or other Court in the matter. The parties were related first as full cousins, then as sister-in-law and brother-in-law, or in more simple language, first full cousins, brother's wife, sister-in-law, and wife; in fact, they were allied by every relationship, propinquity, affinity, and consanguinity. The relationship standing parallel with that of a sister. The idea of incest so gross is enough to disgust a savage, much more any one having the slightest pretensions to Christianity.

Mr Dwight, an eminent writer and lawyer in the United States, describing the confusion into which society in that great republic has been thrown by innovations in the levitical law, says:—

"The effect of these innovations on the law of incest has been to unsettle the minds of the community on the whole subject, to introduce a loose and vague scepticism with regard to the guilt of incest in all cases whatsoever, and to leave a painful uncertainty as to the actual extent of the alterations to which the original law has been subjected. The people at large rarely consult the statute-book. Few of them, so far as my observation extends, appear to be aware that inroads have been made upon the law of incest by the legislative act; yet, perceiving that marriages are actually celebrated which are among those prohibited at the end of the Old Testament, they conclude that the law of incest has grown obsolete. Knowing propinquity* to be the only rule and ground of incest, they naturally place all marriages where the degree of propinquity is the same on a level. The consequence has been, that marriages still pronounced incestuous by the statute-book have been extensively contracted. The parties have thus ignorantly exposed themselves to an infamous punishment, and their children to the loss of their inheritance, and to a disgraceful epithet, under circumstances peculiarly humbling and painful. I have known two instances of marriage between an uncle and niece, and have heard of one between a half-brother and a sister. So general, however, is the impression that this uncertainty is fairly attributable to the legislature, and to the zig-zag plight of the statutes, that incest passes unmolested and unnoticed. Not less general, perhaps, is the impression, that incest, except between lineal relations, cannot be prosecuted to effect. These facts should teach us to 'leave off' the revisal of the Law of God, 'before it be meddled with.'"

In the *American Christian Expositor* for May 1832, in a

* By the word propinquity is intended nearness in general; by affinity, nearness by marriage; and by consanguinity, nearness by blood.

letter to a friend, who seemed about to enter into such a relation, another able writer says:—

"I have personally known many men and women, professing Christianity, who lived in violation of the law in Leviticus, holding that it (the law of Leviticus) was not moral, or if moral, did not apply to their favourite connection. I have known a man to live in connection successively with several sisters. I have known a man to act as a husband to his niece, another to have his own sister, and another to have two wives at a time, all pleading innocence from the law. Yes, we know that one, not very far off, has recently been convicted of *incest* with his own daughter. And yet this last, this horrid connection, cannot be condemned on the principles of your essay now before me. It is necessary to consider the levitical statute as moral, and the prohibitions as convertible, in order to make it criminal in a man to uncover the nakedness of his own daughter.

"I have myself heard marriage with a daughter recommended, as was alleged, on humane and Christian grounds. This is the most opportune and convenient connection; it best preserves the identity, the property, and the peace of the family; the parties best know one another; there is not a drop of the father's blood to be found in the veins of a marriageable daughter; the union is not prohibited, except by inference, in the law of Leviticus, and if it were, that law is positive, not moral; the relation is not nearer than was Adam's to Eve; and the tender affections of a daughter and a sister secure to the parent and to the children the best attentions.

"It appears to me, therefore, that the Church has done well in prohibiting all such connections as incestuous; and I tremble for my country because of its want of that moral sensibility which contemplates incest only with horror."

The state of affairs in this respect in America, though very solemn, has been made the subject of caricature with the view of arresting attention, and, if possible, preventing the growth of the crime. There is no reason why truth should

not be conveyed in a jest; it may not therefore be unwarrantable for me to give here one of those *jeu d'esprits* by which serious truth is conveyed in broad wit on the other side of the Atlantic. Under the head of "Is suicide ever justifiable?" a Pittsburgh paper describes what it calls "a melancholy case of self murder, which occurred near Titusville, Penslyvannia." The following schedule of misfortunes, it observes, was found in the victim's left boot:—

"I married a widow, who had a grown up daughter; my father visited our house very often, fell in love with my step-daughter, and married her. So my father became my son-in-law, and my step-daughter my mother, because she was my father's wife. Sometime afterwards my wife had a son, he was my father's brother-in-law and my uncle, for he was the brother of my step-mother. My father's wife, *i.e.*, my step-daughter, had also a son, he was, of course, my brother, and in the meantime my grandson, for he was the son of my daughter. My wife was my grandmother, because she was my mother's mother. I was my wife's husband and grandchild at the same time. And as the husband of a person's grandmother is his grandfather, I was my own grandfather."

From an American paper, just to hand as I write, I give the following:—

"Colonel Chivington, of St Joseph, Nebraska, having recently married his son's widow, her friends have published a 'card,' in which they say:—'The criminal act of John M. Chivington, in marrying our daughter, Mrs Sarah A. Chivington, the widow of Thomas M. Chivington, was unknown to us, and a thing we very much regret. Had the facts been made known to us of their intentions, some measures would have been taken to prevent the consummation of so vile an outrage, even if violent measures were necessary.'"

Here we find the friends very properly denounce the marriage as a criminal act; and so must every one who has read and believes in the Word of God as contained in the Holy Scripture. Parents and friends who come thus

boldly and manfully forward to give their verdict against their own offspring, set an example to all who call themselves Christians, which ought to be followed, and which, if followed, would no doubt prove beneficial in the stoppage of so iniquitous a practice.

Is there any necessity for adding more? Has not every man an inner consciousness that to violate the sacred law of incest is to violate personal peace, family comfort, and social order. Do I need to refer to all the iniquities perpetrated in Sodom and Gomorrah, which God destroyed by fire from heaven; to all the uncleannesses and sensualities among the ancient heathens, who were eaten up by their own vile lusts and swept off from the face of the earth as with the besom of divine destruction; or to the loosenesses and irregularities, the vices and crimes, of the benighted heathen of other lands in our own times, which we affect so much to pity, and spend so much annually to remove. "Line might be added to line," and "precept to precept," in this way to almost any extent. *Cui bono*, however, let me ask? What more on the subject of which I treat is needed than the clear and explicit declaration of the Great God Himself:—

"IF A MAN SHALL TAKE HIS BROTHER'S WIFE, IT IS AN UNCLEAN THING; HE HATH UNCOVERED HIS BROTHER'S NAKEDNESS: THEY SHALL BE CHILDLESS."

# APPENDIX.

# APPENDIX.

## Opinions of Eminent Scottish Divines.

*The following Ministers of the Gospel in Edinburgh and Glasgow, of all Denominations, have expressed their views in regard to Marriage with a Deceased Brother's Wife as contrary to the Laws of God; but as the opinions would occupy too much space, and are in substance as I have already stated, I simply give the names.*

### MINISTERS IN EDINBURGH.

Rev. W. L. Alexander, D.D.
„ W. Balfour,
„ T. W. Blanshard.
„ J. E. Cumming.
„ P. Davidson.
„ G. Faithful.
„ J. Gall, Jun.
„ A. Gardner.
„ R. Gemmell.
„ W. Glen.
„ W. Graham.
„ G. Jackson.
„ D. Macfie.
„ G. Macgillivray.
„ J. F. Montgomery.
Rev. A. S. Muir.
„ Francis Muir, Leith.
„ A. D. Murdoch.
„ A. Newton.
„ R. Nisbet, D.D.
„ E. B. Ramsay.
„ G. Rigg.
„ D. F. Sandford.
„ W. Tasker.
„ C. R. Teape.
„ E. A. Thomson.
„ R. Wallace.
„ J. Watson.
„ N. Wight.
Etc. Etc. Etc.

### MINISTERS IN GLASGOW.

Rev. A. A. Bonar.
„ R. Bremner.
„ R. W. Buchanan, D.D.
„ D. Cunningham.
„ J. Findlay.
„ A. Fordyce.
„ P. M'Lachlan.
Rev. D. J. Meikan.
„ J. Murray.
„ A. Scott.
„ E. Smith.
„ J. Smith.
„ M. White.
Etc. Etc. Etc.

## The Marriage of Cousins.

In the foregoing pages the subject of the Marriage of Cousins has not been discussed, although there are not a few who hold that all such marriages are undoubtedly unwise. In whatever way it originally came about, the Marriage of Cousins in Great Britain and Ireland is now sanctioned by long usage and custom. The fact, however, that such marriages are not uncommon, is no argument in their favour, as ample experience goes to show that they are, with rare exceptions, productive of the most serious consequences to families and to the nation at large. Nor is it enough to say in their favour that they are nowhere expressly prohibited in the Scriptures, as it is very well known that many other relationships which would be, beyond all doubt, regarded as wrong, and treated criminally as such, were they entered into, are nowhere in so many words prohibited by the Levitical Code. Nature, common sense, and experience ought to demonstrate the impropriety, if not the criminality, of marriages between those so closely related by affinity and consanguinity as cousins.

The weight of medical testimony in Great Britain and other nations is decidedly against the Marriage of Cousins, though somehow or other, chiefly from cupidity, the evil continues to be a growing and a spreading one.

Recently, at a meeting of the French Academy of Sciences, there was read a paper by a celebrated physician, giving an account of his own personal observations in a single family related to each other by cousinship in marriage. Its conclusions amounted to these, that the Marriage of Cousins has a depressing influence over the vital powers; that it

produces sterility, deafness, privation of speech, and weakness of the eyes, and that it seriously impairs the intellectual faculties. Another French medical authority gives it, as the result of his professional experience, that imperfections both of mind and body result from the Marriage of Cousins. In a secluded town, he says, where the inhabitants have little communication with the people of other towns, it is quite a peculiarity for the children to be born with six fingers. Out of 121 Marriages of Cousins, 17 were thus affected.

In America, where the subject of Marriage of Cousins has been largely discussed and investigated, it has been found that 10 per cent. of all the deaf and dumb, 5 per cent. of the blind, and 15 per cent. of the idiots are the result of the Marriage of First Cousins.

The Governors of Maryland and Kentucky advised the legislatures of their respective States to prohibit the Marriage of Cousins under severe penalties. They affirmed it to be a flagrant violation of the laws of nature for cousins to marry, and pointed to the fact that from 17 to 20 per cent. of the fruits of such marriages were to be found as inmates of charitable institutions—787 Marriages of Cousins having produced no fewer than 256 deaf, dumb, blind, or idiotic children.

It is not necessary to state that all Marriages among Cousins are not alike injurious or disastrous. Some constitutions are stronger and better than others; the results, therefore, are not so distressing. It is the duty of all, however, to weigh well the facts associated with the Marriages of Cousins; and if they would have a healthy and vigorous offspring, to choose their partners from families where there is no probability of such results as have been pointed out.

## THE REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.

THE Legislature of Great Britain, though it was somewhat tardy in doing it, has wisely provided that every Birth, Death, and Marriage occurring within the realm shall be duly registered. The process is exceedingly simple; and so far has been found wonderfully efficacious. It is at once a protection against present fraud and imposition, and a ready means of securing accurate information as to family relationships which may by possibility be disputed in the distant future. The Act regulating registrations is known as the 17th and 18th Victoria, chap. 80, and the penalties attached to its violation are severe. The following is the penalty for giving false information:—

"Every person who shall knowingly and wilfully make, or cause to be made, for the purpose of being inserted in any Register of Birth, Marriage, or Death, any false or fictitious entry, or any false statement regarding the name of any person mentioned in the register, or touching all or any of the particulars of this Act required to be Registered, shall be punishable by transportation for a period not exceeding seven years, or by imprisonment for a period not exceeding two years."

Strange though it may appear, the Act has been and is being in a great variety of ways evaded and set at nought—one case of evasion in Edinburgh being notoriously well known to the citizens. It is that of a man in a respectable position in life who lives with his deceased brother's widow, and who has had his children by her registered as if they were legitimate,—the registrar being kept in ignorance of the fact of the nature of the relationship. Had the registrar

insisted upon the offender producing his marriage certificate, which he ought to have done, and there being none to shew, the registration as legitimate could not have taken place. Even now, although intimately acquainted with the facts, the law officers hesitate to interfere and carry out the laws of the land. How will the incestuous father, mother, and children be registered at their marriages or deaths. In the case referred to, double guilt has been incurred—*First*, in the concubinage, which is contrary to the laws of the realm; and, *Secondly*, in the false representation made to the registrar, through which he was illegally induced to record as legitimate the fruits of the incestuous union.

## DIVORCES IN THE UNITED STATES.

SINCE writing the foregoing pages on the evil effects resulting to society from lax views and daring violations of the Levitical Code, there have reached us the records of the American Social Science Congress, which met in December last at Chicago. On the subject of Divorce and Divorce Laws, two interesting papers were read, one of them by a lady. It was stated that it had been found impossible to obtain statistics concerning the number and character of Divorces in the United States, but that it was evident that the number was very large and constantly increasing, and that the causes were often frivolous and insufficient. It has been computed that 2000 Divorces are annually granted in the State of Indiana alone—a State having a population of about 1,000,000 of people—and well-informed residents of that State assert that the number is even greater. Localities differ in the abundancy of Divorces. In counties and towns having a large Catholic population, Divorces are much less frequent than in Protestant communities. In a part of Ohio, settled almost wholly by immigrants from Connecticut, Divorces are as frequent proportionately as they are in Connecticut, where they are excessively numerous. Although accurate statistics cannot be obtained, sufficient is known to show that all over the United States veneration for the marriage tie is decreasing, and Divorces multiply apace. The Divorce Laws in many of the States are, it is too evident, very lax. One of the papers stated that—

"The Divorce Laws of scarcely any two States in the Union are at all similar, excepting that, in nearly every case, a

dangerous discretion is given to the Judges of Courts; and in some instances the laws are so lax, and supply so many vague grounds for application, as to almost strip the Judges of the power to refuse an application. For instance, the Indiana law provides that Divorce may be decreed by circuit Judges, and then adds, 'for any other cause for which the Court shall deem it proper that Divorce shall be granted.' In Iowa, Divorce may be granted when the fact appears that the welfare of the parties require a separation; and in Illinois, certain Judges are empowered to grant Divorces if they should be satisfied of the expediency of such decree. All these causes tend to increase the ratio and frequency of Divorces. In some States the paramour may take for his wife the guilty partner of his crime the day after she is divorced. All must admit that this state of things indicates a decline of moral feeling, and the law, by its unwise provisions, increases the evil. To cover the evil, the law must give a still greater latitude to Divorce, until people get wholly unaccustomed to forgiving each other's failings, and forbearance becomes a rare virtue."

## Vital Statistics of France.

As another illustration of the fearful evils resulting from loose and criminal relationships among the sexes, I take the following from the *Annuaire du Bureau des Longitudes*, as to the state of France:—"The number of births diminishes more and more. From 1819 to 1832, for every 10,000 inhabitants, there were 287 births; from 1833 to 1848, they descended to 265—a difference of one-thirteenth; from 1847 to 1860, the births fell to 246—a difference of 19, or one-thirteenth again; and it continues to decrease. Fifty years ago, there were nearly four children to every family (37 for 10 families); at the present time, there are not more than three—an enormous difference when we consider that this includes the whole country. The fact demonstrates that, in general, the birth of a new infant in a family is not now considered a blessing. . . . From 1847 to 1860, the French inhabiting France brought into the world 3,064,849 illegitimate children, of whom 1,561,500 were males, and 1,563,349 females. In 1867, there were 69,656 illegitimate and 895,511 legitimate births. The proportion between the first and second averaged 1 to 13 throughout France. But in Paris, taken alone, more than one-third, nearly one-half, of the new-born inscribed every year in the Civil State Register are illegitimate. In 1867, we had 39,572 legitimate children and 15,472 illegitimate; the latter, compared to the former, was in the proportion of 10 to 25."

*By the same Author,*

# FREEMASONRY

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